70-29

Supreme Court, U.S.
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APPENDIX

Supreme Court of the United States

OCTOBER TERM, 1970

No. [redacted]

JOHN GIGLIO,

Petitioner,

—v.—

UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR A WRIT OF CERTIORARI
FILED OCTOBER 23, 1970
CERTIORARI GRANTED MARCH 1, 1971

Supreme Court of the United States

OCTOBER TERM, 1970

No. 892

JOHN GIGLIO,

Petitioner,

—v.—

UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SECOND CIRCUIT

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Docket Entries

CRIMINAL DOCKET

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

66 Crim. 384

JOHN GIGLIO, Petitioner

vs.

UNITED STATES OF AMERICA

DATE	PROCEEDINGS
9-29-66	Before Zavatt, Ch. J.—Indictment Ordered Filed.
10-6-66	Notice of Appearance filed.
10-6-66	Before Zavatt, Ch. J.—Case called. Deft. and counsel present—Deft. arraigned and enters plea of not guilty—Bail continued and case placed on General Calendar.
8-9-68	Before Real, J.—Case called. Deft and counsel R. Lazarus present. Trial ordered & BEGUN. Jurors selected and sworn. Trial continued to 8/13/68.
8-12-68	Before Real, J.—Case called. Deft. present. Trial resumed. Atty. for deft moves for Judgment of Acquittal, etc. Court dismisses count 3 of the Indictment. Counts 1 and 2 and 4 remain to be heard by Jury. Trial continued to Aug. 13, 1968 at 10:00 A.M.

Docket Entries

DATE	PROCEEDINGS
8–13–68	Before Real, J.—Case called. Deft. present. Trial resumed. Atty for deft. moves for mistrial and withdrawal of Juror, etc. Motion denied. Order of Sustenance signed. Jury returns at 4:00 PM with a verdict of guilty as to counts 1, 2 & 4. Jury polled. Jury discharged. Trial concluded. Deft. continued on Bail. Sentence adjd without date.
8–21–68	Stenographers transcript filed, pages A-1 to A-121 dated 8/12/68.
8–21–68	Stenographers transcript filed (2) both dated 8/9/68.
10–29–68	Before Real, J.—Case called. Deft. and counsel Mr. La Rossa present. Deft. sentenced to imprisonment for a period of 5 years on count 1—5 years on count 2 and 5 years on count 4. Sentences to counts 1 and 4 to run concurrently pursuant to Sec. 4208(a)(2) of Title 18, U. S. Code. Sentence on count 2 is suspended and deft is placed on probation for a period of 5 years to run consecutively with sentence imposed on counts 1 and 4. Bail fixed at $7500.00 pending appeal.
10–29–68	Judgment & Commitment & Order of Probation filed. Certified copies to Marshal & Probation.
11–1–68	Notice of Appeal filed.
2–3–69	Record on Appeal certified and mailed to the Court of Appeals. U.S. Attys office notified.

Docket Entries

DATE	PROCEEDINGS
6–13–69	Certified copy of Judgment received from the Court of Appeal filed affirming the Judgment of this Court.
6–30–69	Record on Appeal received from Court of Appeals. Acknowledgment mailed to Clerk for receipt of Record.
7–14–69	Before Judd, J.—Motion for a New Trial, etc. Case called & surrender adjd to August 4, 1969.
7–14–69	Notice of Motion filed, ret. 7/14/69, for an order granting new trial on the ground of newly discovered evidence, pursuant to Rule 33, F.R.C.P.
8–4–69	Before Dooling, J.—Motion for a new trial, etc. Case called & adjourned to August 25, 1969 at the request of the Govt.
8–22–69	Defts. Memorandum of Law filed.
8–25–69	Before Mishler, Ch. J.—Motion for a new trial, etc. Case called—Deft and counsel Mr. La Rossa present—Marked Submitted—Papers by Sept. 25, 1969 from the Govt and reply by the deft by Sept 30 1969.
10–20–69	Govts. affidavit in opposition to defts. motion granting a new trial on the grounds of newly discovered evidence, etc. filed.
10–24–69	Defts. reply affidavit filed in opposition.

Docket Entries

DATE	PROCEEDINGS
3–16–70	By Real, J.—Order filed denying defts. motion for a new trial, etc. (order dated Mar. 11, 1970 received this date)
3–27–70	By Travia, J.—Order filed that the time within which the deft may file his Notice of Appeal from an order of the Hon. Manuel L. Real, denying a motion for a new trial dated Mar. 11, 1970 and upon consent of the U.S. Atty. be extended to and including March 27, 1970.
3–27–70	Notice of Appeal filed.
3–27–70	Docket entries and duplicate of Notice of Appeal mailed to C. of A.
5–5–70	By Mishler, Ch.J. Order filed extending time to docket appeal to 6–3–70 (P/C mailed to attys)

Indictment

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

66 Cr. 384

[SAME TITLE]

THE GRAND JURY CHARGES:

COUNT ONE

On or about the 27th day of June 1966, within the Eastern District of New York, the defendant JOHN GIGLIO, unlawfully and with fraudulent intent, transported and caused to be transported in interstate commerce from New York to California, twenty-three (23) Travelers Express money orders drawn on the Crocker-Citizens National Bank, Los Angeles, California, knowing the same to have been forged. (Title 18, United States Code, §§ 2314 and 2.)

COUNT TWO

On or about the 28th day of June 1966, within the Eastern District of New York, the defendant JOHN GIGLIO, unlawfully and with fraudulent intent, transported and caused to be transported in interstate commerce from New York to California, twenty (20) Travelers Express money orders drawn on the Crocker-Citizens National Bank, Los Angeles, California, knowing the same to have been forged. (Title 18, United States Code, §§ 2314 and 2.)

COUNT THREE

On or about the 5th day of July 1966, within the Eastern District of New York, the defendant JOHN GIGLIO, unlawfully and with fraudulent intent, transported and caused to be transported in interstate commerce from New York to California, thirty (30) Travelers Express money orders drawn on the Crocker-Citizens National Bank, Los Angeles, California, knowing the same to have been forged. (Title 18, United States Code, §§ 2314 and 2.)

COUNT FOUR

On or about and between the 26th day of June 1966 and the 5th day of July 1966, both dates being approximate and inclusive, within the Eastern District of New York, the defendant JOHN GIGLIO, together with Robert Edward Taliento, named herein as a co-conspirator but not indicted herein, conspired to commit offenses against the United States of America, in violation of § 2314, Title 18, United States Code, by wilfully and knowingly conspiring to transport and cause to be transported in interstate commerce from New York to California, seventy-three (73) Travelers Express money orders drawn on the Crocker-Citizens National Bank, Los Angeles, California, in excess of Five Thousand Dollars ($5,000.00), knowing the same to have been stolen and forged. (Title 18, United States Code, § 371)

In pursuance of said unlawful conspiracy, and for the purpose of effectuating the objects thereof, the aforesaid defendant JOHN GIGLIO and Robert Edward Taliento, named as a co-conspirator herein but not indicted herein, committed the following

Indictment

OVERT ACTS

1. On or about the 22nd day of June 1966, at Brooklyn, within the Eastern District of New York, the defendant JOHN GIGLIO approached and asked Robert Edward Taliento, named as a co-conspirator herein, but not indicted herein, an employee of the Manufacturers Hanover Trust Company located at 1390 Avenue U, Brooklyn, New York, to cash some Travelers Express money orders drawn on the Crocker-Citizens National Bank, Los Angeles, California, at the bank where the said Robert Edward Taliento was employed, informing him that said money orders had been forged and stolen.

2. On or about the 24th day of June 1966, within the Eastern District of New York, the said Robert Edward Taliento, named as a co-conspirator herein, but not indicted herein, removed from the Manufacturers Hanover Trust Company at 1390 Avenue U, Brooklyn, New York, the signature card of one George Cohen, a depositor of said bank, and gave said signature card to the defendant JOHN GIGLIO.

3. On or about the 27th day of June 1966, within the Eastern District of New York, the said Robert Edward Taliento, named as a co-conspirator herein, but not indicted herein, delivered $2300.00 to the defendant JOHN GIGLIO, and received from said defendant JOHN GIGLIO twenty (20) additional Travelers Express money orders drawn on the Crocker-Citizens National Bank, Los Angeles, California, which money orders had been stolen, and that said Robert Edward Taliento and the said JOHN GIGLIO had a conversation regarding the cashing of the additional Travelers Express money orders.

4. On or about the 28th day of June 1966, within the Eastern District of New York, the said Robert Edward Taliento, named as a co-conspirator herein, but not indicted herein, delivered $2050.00 to the defendant JOHN GIGLIO, which monies had been removed from the Manufacturers Hanover Trust Company, located at 1390 Avenue U, Brooklyn, New York, in exchange for the aforesaid twenty (20) stolen and forged Travelers Express money orders drawn on the Crocker-Citizens National Bank, Los Angeles, California.

5. On or about the 5th day of July 1966, within the Eastern District of New York, the defendant JOHN GIGLIO went to the Manufacturers Hanover Trust Company located at 1390 Avenue U, Brooklyn, New York, and delivered thirty (30) Travelers Express money orders drawn on the Crocker-Citizens National Bank, Los Angeles, California, to the said Robert Edward Taliento, named as a co-conspirator herein, but not indicted herein, both knowing the aforementioned money orders to have been stolen and forged, and for which said Robert Edward Taliento delivered to the said defendant JOHN GIGLIO the sum of $3,000.00, which money was in the care and custody of the aforesaid Manufacturers Hanover Trust Company.

A TRUE BILL

/s/ CHARLES J. KING, JR.
CHARLES KING, JR., Foreman

/s/ JOSEPH P. HOEY
Joseph P. Hoey
United States Attorney

Testimony of Lonnie Adams (Portions thereof)

(22)

A. Yes. A worksheet is a sheet that is used by the tellers to list all transactions of the day. In order to prove there is cash out at night, he needs the listing of all of the transactions, deposits, checks cashed, cash taken in and so forth.

Q. I show you Government's Exhibit 2 for identification and ask you if you can identify that sheet (handing). A. Yes, I can.

Q. Will you tell us what that sheet is? A. That sheet represents teller Robert Taliento's work for June 27, 1966.

Q. Does it bear his signature? A. It bears his signature.

Q. Do you recognize it as his signature? A. I do.

Q. Is there any relationship between that worksheet and Government's Exhibit 1 for identification? A. Yes.

Q. Will you tell us what relationship, if any, there was between the two? A. On the back of his worksheet there

(23)

are listings that represent the same as those checks. Checks are run as dollar amounts on the back and they are the same number and the amount of these checks.

Mr. Golden: I offer in evidence Government's Exhibits 1 and 2. I will show them to Mr. Lazarus.

The Court: Any objection to those?

Mr. Lazarus: Yes, I will object.

The Court: The objection is sustained.

Mr. Golden: I ask the Court to take it subject to connection.

The Court: We will mark it for identification and then we will take it subject in evidence. If you can connect it, we will take them in evidence, Mr. Golden.

Mr. Golden: Very well.

Testimony of Lonnie Adams (Portions thereof)

Q. Mr. Adams, would you tell us if there was any relationship between worksheets of the other tellers and Government's Exhibit 1 for identification? A. No, sir.

Q. Do you recall examining those? A. I recall, yes.

Q. Are those worksheets in existence now of the other tellers? A. No, they are destroyed.

Mr. Golden: I ask that these series of Travelers Express money orders be marked for identification as Government's Exhibit 3 for identification.

(21 checks marked Government's Exhibit 3 for identification)

Q. I show you Government's Exhibit 3 for identification and ask you if you can identify this series of documents (handing). A. Yes, I can.

Q. Tell us what they are. A. Travelers Express money orders.

Q. Would you tell us where they were cashed. A. At the office of 1930 Avenue U, Manufacturers Hanover Trust Company, July 8, 1966.

Q. Do they bear the stamps that you testified to before with respect to Government's Exhibit 1? A. They do.

Mr. Golden: I ask that this sheet be marked Government Exhibit 4 for identification.

(One worksheet dated June 28, 1966, marked Government's Exhibit 4 for identification)

Q. I ask you whether you can identify

Testimony of Lonnie Adams (Portions thereof)

(27)

Q. Mr. Adams, I show you Government's Exhibit 6 for identification and ask you if you recognize that card (handing). A. I do.

Q. Will you identify it for us. A. It is the signature card of the account of George Cohen.

Q. Do you know Mr. Cohen? A. I know him.

Q. Do you know his signature? A. Yes, I do.

Q. Can you identify that as a signature card maintained in the regular course of business of the Manufacturers Hanover Trust Company in 1966? A. I do.

Q. To the best of your recollection do you know of any other depositors by the name of George Cohen who maintain a permanent account at the Manufacturers Hanover Trust Company in 1966? A. To my knowledge there is no other George Cohen there at that time.

(28)

Mr. Golden: Your Honor, I make the offer on the card and on the exhibit here, 2 for identification, subject to connection, the same as previously made with the representation that we will have the connection made subject to being stricken.

Mr. Lazarus: Same objection, your Honor.

The Court: The objection as to 1, 2, 3, 4, and 5 is sustained and the objection to Number 6 is overruled.

(Government Exhibit 6 previously marked for identification now received in evidence)

Q. Directing your attention to July 5, 1966, did you have a conversation with teller Robert Taliento on that date?

Testimony of Lonnie Adams (Portions thereof)

Mr. Lazarus: I will object.

The Court: That is being overruled.

Q. Did you hear the question? A. Yes.

Q. Mr. Adams, did you on July 5, 1966, show Mr. Taliento the exhibit previously marked for identification? A. The money orders, yes.

(29)

Mr. Lazarus: I will object to that.

The Court: As to that question, the objection is overruled.

Q. Could you tell us whether Mr. Taliento's employment was terminated at the Manufacturers Hanover Trust Company in July or June of 1966? A. When it was terminated?

Q. Yes, if it was terminated. A. July 5th. He didn't return to the office after July 5th.

Mr. Golden: I have no further questions. You may examine.

Cross-Examination By Mr. Lazarus:

Q. Did you personally fire Mr. Taliento? A. No, sir.

Q. Do you know who did fire him? A. No.

Q. Was he fired?

The Court: Do you want to use the lectern, Mr. Lazarus

Mr. Lazarus: Your Honor, I just want to use one of those exhibits.

Testimony of George V. Cohen (Portions thereof)

(34)

Q. Mr. Cohen, do you do business with the Manufacturers Hanover Trust Company? A. I do.

Q. How long have you been doing business with Manufacturers Hanover Trust Company? A. Since 1940.

Q. In 1966, did you have a personal account at the Manufacturers Hanover Trust Company? A. I did.

Q. And did you, to your knowledge, have on file there a signature card? A. I did.

Q. I show you Government's Exhibit 6 in evidence and ask you if you can identify this signature card (handing). A. Yes, it is my signature.

Q. I now show you, Mr. Cohen, Government's Exhibit 1, 3 and 5, constituting a series of Travelers Express money orders and ask you to examine the endorsement contained on the reverse side of each one of those money orders and to advise the Court and Jury as to whether the signature appears thereon is your signature.

(35)

Mr. Lazarus: I will object to that question.

The Court: The objection will be overruled.

The Witness: It is my signature.

Q. Examine all of them carefully. A. On the ones that I have gone through so far—none of the signatures on any of these exhibits are mine.

Mr. Golden: No further questions. You may examine.

Testimony of George V. Cohen (Portions thereof)

Mr. Lazarus: No questions.

The Court: Step down.

Call your next witness.

Mr. Golden: I call Robert Taliento to the stand.

* * * * *

Testimony of Robert Edward Taliento

(36)

ROBERT EDWARD TALIENTO, residing at 2123 East 9th Street, Brooklyn, New York, called as a witness on behalf of the Government was duly sworn and testified as follows:

Direct Examination by Mr. Golden:

Q. With whom do you live? A. My parents.

Q. In 1966 with whom were you residing? What was your family composed of? A. My mother, father and brother.

Q. Were you living in the same place that you just testified to? A. Yes.

Q. What was your educational background, Robert? A. Graduated four years of high school.

Q. What high school did you graduate from? A. Xaverian.

Q. When did you graduate from high school? A. June of 1964.

Q. Did you go to work after graduating from high school? A. A few months later.

(37)

Q. What kind of job did you get? A. Clerk in a bank.

Q. What bank? A. Manufactures Hanover Trust.

Q. Where was this bank located? A. Avenue U and Ocean Avenue, Brooklyn.

Q. What duties did you perform as a clerk? A. Using an adding machine, helping the other tellers with their clerical work.

Q. For how long a period of time were you a clerk? A. About two months, a month or two.

Testimony of Robert Edward Taliento

Q. How old were you when you graduated from high school? A. About 18.

Q. After holding this position as a clerk, did you continue in the employ of the Manufacturers Hanover Trust Company? A. Yes.

Q. What was your next position at this bank? A. I became a savings teller.

Q. What is a savings teller? A. He takes in deposits on bank books, withdrawals, Christmas Clubs, loan payments.
(38)

Q. For how long a period were you a savings bank teller? A. About seven months.

Q. Did you then assume another position? A. Yes, then I became a unit teller.

Q. A unit teller? A. Yes.

Q. What did a unit teller do as contrasted with a savings teller? A. They took in deposits on checking accounts, cashed checks, taking in coin deposits.

Q. When did you assume the position of unit teller at the Manufacturers Hanover Trust Company? A. Well, that was right after I became a savings teller, that would be about the fall of '65, I believe.

Q. Do you know the defendant in this action, John Giglio? A. Yes.

Q. Can you point him out to us in this courtroom? A. Yes. (indicating)

Q. Will you point to him. A. Yes. (indicating)
(39)

Mr. Golden: Will the defendant please rise.

Q. Is that John Giglio? A. Yes.

Testimony of Robert Edward Taliento

Mr. Golden: Thank you.

Q. When did you first meet John Giglio? A. Around Christmas time of '65.

Q. Were you a unit teller at that time? A. Yes.

Q. Between Christmas of '65 and July of '66 how many occasions did you have to meet with this defendant? A. A few times, maybe four or five.

Q. Would you describe these meetings generally? A. Well, you—

Mr. Lazarus: I will object to that.

The Court: The objection is sustained.

Q. Did there come a time in June of 1966—I withdraw that.

Do you know the defendant, John Giglio, by any other name? A. Yes, as Junior.

Q. Was that during this period from about Christmas (40)
of '65, from the fall of '65 through July of '65 that you knew him as Junior? A. Yes.

Q. Did there come a time in June of 1966 when you recall having a particular conversation with this defendant? A. Yes.

Q. Could you tell us where this conversation took place? A. In the vicinity of the neighborhood where I live; that would Avenue U. I live on the avenue and West 9th Street so it was in the vicinity of where I live.

Q. Could you tell us about when this happened in June? A. Mid June.

Testimony of Robert Edward Talienta

Q. Would you tell us what was said by you and what was said by the defendant in this conversation?

Mr. Lazarus: May I have the time set? Mid June of what year?

Q. In June of what year? A. 1966.

Q. Would you tell us what was said by you and what was said by the defendant at that time?

(41)

Mr. Lazarus: Your Honor, may I—before that question know if anybody was present at that time.

The Court: Was anyone else present?

The Witness: No.

Q. Would you tell us what was said by you and what was said by the defendant? A. Well, he asked me if would be able to cash some checks for him and I said, "Yes" but I had to see what kind of checks they were first and he says he will show me them in a couple of days.

Q. When did you next have occasion to meet with the defendant, John Giglio? A. That would be a couple of days later.

Q. Could you tell us about when this was? A. Maybe the 19th of June, the 20th of June.

Q. Where did this meeting take place? A. In the same vicinity.

Q. Was anyone else present other than you and the defendant, John Giglio? A. No.

Q. Would you tell us what was said by you and what was said by the defendant, John Giglio, at that time? A. Well,

(42)

he showed me the checks. I said it needed a signer and endorser and since he didn't have it and can't—it was necessary to put a name on the check.

Q. Will you describe to the Court and jury what the checks looked like to the best of your recollection when they were shown to you by the defendant, John Giglio? A. Rectangular checks about this size (indicating), made out in blank.

Q. When you say, "made out in blank" what do you mean by that? A. There was nothing filled in, no name, no—

Q. You were a teller in the bank and you cashed money orders and checks? A. Right.

Q. Will you explain to the Court and the jury what a made out check is as far as you know? A. A check made out to a person and signed by a person.

Q. Were the checks shown to you by John Giglio at this second meeting made out to any person? A. No.

Q. Were they endorsed by any person? A. No.

(43)

Q. Did John Giglio say anything else to you at that occasion or was that the entire conversation to the best of your recollection on the second meeting? A. He wanted to know what name should be put on it. Since he didn't have an account at my bank, it was suggested that a regular customer of my bank be put on the check.

Q. What did you say to that request? A. That I told him that I would get a name to put on the check.

Q. What did you do after that? A. Well, after that I proceeded to get a card whose name he used to put on the checks from work.

Testimony of Robert Edward Taliento

Q. I show you Government's Exhibit 6 in evidence and ask you whether or not you could recognize this signature card? A. Yes, this is the card that was used, that was taken and used.

Q. Do you remember about when you took this card? A. It would be June—about the 22nd or 23rd of June.

Q. Where did you take this card from? A. The bank (44)
where I was employed at.

Q. Did you have a third meeting with the defendant, John Giglio? A. Yes.

Q. Where did that meeting take place? A. The same vicinity as the rest.

Q. When, about the 23rd or so? A. About—around the 25th or 26th of June of that year.

Q. Where did that meeting take place? A. The same vicinity as the others.

Q. Was it in a building or on the street? A. It was no particular place. It was in the area where I lived.

Q. Was anyone else present? A. No.

Q. What happened at this meeting? A. Well, he handed me an envelope plus the signature card.

Q. Was it this signature card that he handed to you (handing)? A. Yes.

Q. Had you previously given him this signature card? (45)
A. Yes.

Q. Had you previously given him this signature card? A. Yes.

Q. When did you give him that signature card? A. Like I say, the 23 of June, the 22nd of June.

Testimony of Robert Edward Taliento

Q. About the 25th, 26 of June he returned the signature card to you in an envelope? A. Yes.

Q. What was in the envelope? A. Checks, the bank money orders.

Q. I show you Government's Exhibit 1 for Identification and ask you if you recognize this series of checks (handing). A. These are the same checks.

Q. The checks that John Giglio—

Mr. Lazarus: I object to the form of the question.

The Court: He hasn't stated the question yet.

Mr. Lazarus: I withdraw the objection.

Q. Would you tell the jury whether or not Government's Exhibit 1 for Identification that you just examined constitutes a series of checks which was given to you in an envelope (46)
on or about June 25th or 26th by the defendant John Giglio? A. Yes, they are.

Mr. Golden: I offer Government's Exhibit 1 for Identification into evidence.

The Court: Any objection, counselor?

Mr. Lazarus: I would like to examine them.

The Court: All right.

Mr. Lazarus: It will take me a few minutes to go through all of these exhibits.

The Court: Go ahead.

Mr. Lazarus: May I approach the Bench? I would like some time to look at all the exhibits.

The Court: Could you go over those now?

Mr. Lazarus: All right.

I will object to certain markings on these checks which are not actually part of the exhibit.

The Court: The objection will be overruled. One in evidence.

Mr. Lazarus: May I specify the grounds of that

(47)

objection at the Bench?

The Court: I know what the ground is, counselor. If you want to approach the Bench, that will be all right.

(A side bar conference was held without the hearing of the jury, recorded as follows:)

Mr. Lazarus: I think the markings on there, particularly with reference to one, "stolen in blank. Fictitious," is prejudicial. He is not charged with stealing anything. The Government, as a matter of fact, removed any contention that he stole anything and I think to submit this in evidence would be viewed by the jury and it would be highly prejudicial.

The Court: I will instruct the jury about that aspect of the case and certainly you can take it up on cross examination as to what was on it.

Mr. Golden: This is not being offered for the truth of what this statement says but merely as the bank official testified that this was the stamp that he had on it when he received it back from California.

(48)

Mr. Lazarus: Whether it is true or not, it is purely physical to the jury.

Mr. Golden: I think the rule is that a document is admissible even though it has matter on it that isn't admissible.

The Court: Maybe you can remove these yellow tags.

Mr Golden: Except that I will have a witness from California who will testify as to having put this on.

The Court: Having put the stamp on?

Mr. Golden: Right.

The Court: Then the objection will be overruled. One in evidence.

Mr. Lazarus: The Court knows that I have the same objection to it.

The Court: Yes.

(Government's Exhibit I previously marked for identification received in evidence.)

By Mr. Golden:

Q. When you received these Travelers Express money orders from the defendant, John Giglio, did they have the (49)
stamp contained on the face of each one of those Travelers Express money orders? A. What do you mean by, "stamp"?

The Court: Did they have any stamps—

Q. Did you see a stamp on the front? I am not talking about the reverse. A. Yes.

Q. Did they have those stamps on there? A. This stamp? No.

Mr. Golden: If the Court please, I should like to read the manner in which these money orders are drawn and how they are addressed to the jury at this time.

Mr. Lazarus: I will object. They are in evidence.

The Court: Yes, they are in evidence and the jury will be able to view in the jury room.

Q. When these money orders, Travelers Express money orders drawn on the Crocker-Citizens National Bank, Los Angeles, California in the denomination of $100, were delivered to you by John Giglio on or about the 26th, did you have a conversation with him concerning these money orders?

(50)

Mr. Lazarus: Judge, I object to the form of this question. I think this witness has been led enough and I think that question is leading.

The Court: Yes, the objection will be sustained.

Q. Did you have a conversation with John Giglio on or about June 26th when Government's Exhibit 1 in evidence was delivered to you? A. Yes.

Q. What did he say and what did you say to him at that time? A. Well, after he handed me the envelope back with the signature card, he just told me, "I will see you tomorrow and it will be worth your while" and that was it.

Q. What did you do after that? A. Well, then the next day I went to work.

Q. What day was that? A. The following day, about the 27th of June.

Testimony of Robert Edward Taliento

Q. Would you tell us what date it was by examining Government's Exhibit 1 in evidence with any degree of certainty? A. Yes, June 27th of '66.

(51)

Q. On June 27th, what did you do when you went to work? A. I processed the money orders through my daily work and removed the amount—in the amount of the checks that I drew.

Q. Do you remember how much money was that? A. I believe it was the same money as the checks, about twenty-one hundred, twenty-two hundred. It would be twenty-one or twenty-two hundred, the same amount as is the checks.

Q. How many checks did you have there? Do you want to count them? A. Twenty-three.

Q. Does this refresh your recollection as to the amount of cash you removed from your cash draw? A. It would be $2,300.

Q. What did you do with that cash? A. Well, I removed from my draw and put it in an envelope and proceeded to do my day's work.

Q. What did you do with Government's Exhibit number 6, if anything, on this date? A. I put it back in the file.

Q. After doing this, did you again have occasion to meet

(52)

with the defendant John Giglio? A. Later on that evening.

Q. The evening of the 27th? A. Yes.

Q. About what time did that meeting take place? A. Eveningtime, maybe 8:00 or 9:00 o'clock.

Q. Where did that meeting take place? A. It would be the same locality of the neighborhood, Avenue U and West 9th—10th.

Testimony of Robert Edward Taliento

Q. Do you have an independent recollection of what the Avenue of West 9th and Avenue U looked like at this period of time that we are talking about, on or about June, the latter part of June, 1966? Could you picture in your mind what the four corners look like? What was physically situated there? A. On one corner you have a catering hall, opposite—on the diagonal corner there is a bar and grill and opposite that there is a super market and opposite that there is a small department store.

Q. In which corner did you generally meet, if you can recall with the defendant John Giglio? A. It wasn't on any of those particular corners. It would be any one of those corners.

(53)

Q. You don't remember if it was a particular one but it was in that area? A. Yes.

Q. Could you tell us what happened at this meeting in the evening of June 27, 1966? A. Well, I handed over the defendant the envelope containing the amount of money that I had taken.

Q. What did John Giglio do, if anything? A. In return he gave me $500.

Q. Did you have a conversation? A. He said he would see me later on during the evening.

Q. Did he tell you when he would see you later that evening? A. Maybe an hour.

Q. What did you do in the interim?

Mr. Lazarus: Judge, I will object to his leading this witness.

The Court: Yes, Mr. Golden, ask questions.

Testimony of Robert Edward Taliento

Q. What happened after that? A. After that I waited an hour.

Q. And what happened? A. Then I met the defendant again.

(54)

Q. Where did you meet him this time? A. In the same vicinity as before.

Q. Was anyone present at this meeting? A. No.

Q. What happened? A. In turn he handed me an envelope containing the money orders and just said, "I will see you tomorow."

Q. You pointed to the exhibit before you.

He didn't hand you those money orders, did he? A. No.

Q. He handed other money orders? A. Yes.

Q. Do you remember how those money orders were drawn? A. The same as before.

Q. To whom were they drawn? A. Harry—to George Cohen—made out to George Cohen.

Q. That was the name that was on the signature card that you delivered?

Mr. Lazarus: I will object.

The Court: Yes, Mr. Golden, ask questions, don't

(55)

testify.

Mr. Golden: I am sorry, your Honor.

Q. I show you Defendant's Exhibit 3 for Identification and ask you if you recognize those Travelers Express money orders? A. Yes, these are the money orders I received.

Mr. Lazarus: I can't hear him.

The Court: Speak up.

The Witness: These were the money orders I had received.

Q. When? A. The night of the 27th of June.

Q. From whom? A. From the defendant.

Q. Did they have the stamp that appears on the front of them at the time you received them from the defendant? A. No.

Q. Were they drawn and endorsed as they appear in the exhibit before you in examining each and every money order? A. Made out the same way.

Mr. Golden: I offer Defendant's Exhibit 3 for Identification into evidence.

(56)

Mr. Lazarus: Same objection.

The Court: The objection will be overruled.

3 in evidence.

(So marked.)

The Court: Mr. Golden, would this be a good time to take a break?

Mr. Golden: Yes, certainly.

The Court: Ladies and gentlemen of the jury, we will take our afternoon adjournment at this time. I have another jury coming in. In the meantime, do not converse or communicate amongst yourselves upon any subject touching the merit of this case on trial. You are not to form or express any opinion of the case until it is finally submitted to you for your

verdict. We will be in recess until 10:00 o'clock on Monday morning. When you come in on Monday please come to courtroom number 10, that is the courtroom next door at 10:00 o'clock.

The jury is excused. The Court will remain in session.

(57)

The Clerk: Case on trial, United States of America against John Giglio.

Mr. Lazarus: Before the jury comes in, I would like to inquire of Mr. Golden whether there are any recordings of an alleged meeting between the defendant and the witness Taliento on July 5, 1966; miniphone recordings or a recording of an alleged telephone conversation between Taliento and the defendant.

Mr. Golden: There are no such recordings.

The Court: Bring in the jury.

We will take a jury roll. Mr. Driscoll is not here. Will alternate juror number one please take Mr. Driscoll's place as juror number six.

Is it stipulated that the jurors are present and in their proper places?

Mr. Golden: Yes.

Mr. Lazarus: Yes.

The Court: All right, Mr. Golden, continue.

(Continue on next page.)

Testimony of Robert Edward Taliento

(58)

ROBERT EDWARD TALIENTO, resumed the stand and testified further as follows:

The Court: Keep your voice up so all the jurors can hear you.

Direct Examination by Mr. Golden:

Q. Mr. Taliento, I show you Government's Exhibit 3 in evidence, which you identified at the conclusion of your testimony as being a series of Traveler's Express money orders delivered to you by the defendant on June 27, and I ask you what, if anything, you did with these Traveler's Express money orders after receiving them? A. I processed these in the same manner as I did before.

Q. When did you do that? A. The 28th of June.

Mr. Lazarus: What is the exhibit number you are referring to?

The Court: Exhibit 3.

Q. Mr. Taliento, I show you two sheets marked Government's Exhibits 2 and 4 for identification, and I ask you if you can identify these sheets? A. These are work sheets,

(59)

bank work sheets.

Q. Do you know whose work sheets they are? A. These are mine.

Mr. Golden: I offer them in evidence as Government's Exhibits 2 and 4, previously marked for identification.

Testimony of Robert Edward Taliento

The Court: Any objection, counsel?

Mr. Lazarus: Yes, I object on the grounds that it is not the best evidence.

The Court: They are received, 2 and 4 in evidence.

The Clerk: Government's Exhibits 2 and 4 previously marked for identification are now received in evidence.

Q. Did those work sheets indicate checks or Traveler's Express money orders cashed by you on June 27 and June 28?

Mr. Lazarus: I object to the form of the question.

The Court: Objection overruled.

A. It notes all different kinds of checks being cashed.

Q. Would you tell us what those work sheets indicate in terms of checks cashed, referring first to that sheet (60)
which indicates the work you did on June 27?

Mr. Lazarus: I object to the form of the question.

The Court: The objection will be overruled.

Q. The front would show any kind of deposits that were taken into the bank and would show any check cashed during the day.

I now direct your attention to the work sheet for June 28th, '66, and I ask you to explain what information appears on that work sheet? A. The same as the one before; whatever came in and whatever was cashed.

Testimony of Robert Edward Taliento

Q. Would you examine those and tell us whether they include among items cashed, the items you have identified as having been delivered to you by the defendant, John Giglio? A. These wouldn't denote what was cashed, just the amount of the check.

Q. Does it have the amounts that you cashed, does it? A. Yes, by all individual amounts.

Q. After cashing the Traveler's Express money orders in Exhibit 3 in evidence, what, if anything, did you do? (61)

A. I cashed them, and went through my day's work.

Mr. Lazarus: I cannot hear.

The Court: Speak up so everyone can hear you.

A. I cashed the Traveler's checks, withdrew the money from the drawer, and went to my day's work.

Q. What, if anything, did you do at the end of the day? A. Then, I went home. Then, I met the defendant later that night.

Q. Where did the meeting take place? A. In the vicinity of the others, in the neighborhood.

The Court: You keep dropping your voice. Talk to the exit sign out there so that everybody can hear you.

A. The same vicinity as the other meetings.

Q. Would you tell us what happened at that meeting? A. Well, I handed the defendant an envelope containing the money and in turn I received $500 in large bills.

Q. How much money was in the envelope on this second

(62)

occasions? A. $2,100.

Q. After this meeting of June 28th, 1966, did you again have occasion to meet with the defendant, John Giglio? A. That wouldn't be until July 4th.

Q. Where did that meeting take place? A. The same vicinity as the others.

Q. What time? A. In the evening, 8 or 9 o'clock.

Q. Was there anyone present other than yourself and the defendant? A. No.

Q. Tell us what happened? A. He told me he had a few more checks to cash and I told him if he wanted to cash them, he should come into the bank and we will cash them.

Q. Was that your entire conversation with the defendant on July 4th? A. I would say so.

Q. When did you next have occasion to see the defendant if at all? A. The next morning at the bank.

Q. Tell us what happened? By the way, what time was

(63)

that approximately? A. It would be in the morning.

Q. Would you tell us what happened on that occasion? A. He came in and handed me the checks and I cashed them and he said, "I'll see you," and that was it.

Q. Where were you at this time? A. At work in the bank.

Q. In your cage? A. Yes.

Q. I show you Government's Exhibit 10 for identification and ask you if you can identify this series of checks? A. These are the checks.

Q. Can you be more specific when you say these are the checks and explain what the checks are? A. These are the checks I cashed that day.

Testimony of Robert Edward Taliento.

Mr. Golden: I offer in evidence Government's Exhibit 5 for identification.

Mr. Lazarus: The same objection as made previously.

The Court: Overruled.

The Clerk: Government's Exhibit 5 for identification is now marked in evidence. It is a series of 30

(64)

checks.

Q. How much money did you give to the defendant at this meeting when he appeared at the bank? A. The amount of the checks, whatever they amounted to.

Q. Would you look at these checks and tell us how much money you gave him? A. $3,000.

Q. Mr. Taliento, was there any reason for the procedure followed with respect to Exhibits 1 and 3, changing that procedure with respect to Exhibit 5 in evidence?

Mr. Lazarus: I object to the form of the question.

The Court: The objection will be sustained.

Q. Mr. Taliento, why didn't you do the same thing with Exhibit 5 in evidence as you did with Exhibits 1 and 3? A. I don't understand what you mean.

Q. You cashed those checks on July 27th and 28th personally, is that correct? A. Yes.

Q. Your testimony is that the defendant cashed the checks,

(65)

at least appeared at the bank and received the proceeds of the cashed checks on July 5th, and I am asking you, was

there any reason or can you explain why this change in procedure took place?

Mr. Lazarus: I object.

The Court: The objection will be sustained.

Q. Mr. Taliento, I show you Government's Exhibit 1 in evidence and I ask you whether or not you had occasion to see these checks again on July 5, 1966? A. Yes, I showed —the checks were showed to me by one of the bank officers.

Q. Did you have a conversation with that bank officer? A. Yes.

Q. Did you talk to others at the bank aside from one bank officer? A. Yes.

Q. Did there come a time of July 5, 1968, when you met with agents of the Federal Bureau of Investigation? A. Yes.

Q. Did you talk to them? A. Yes.

(66)

Q. What, if anything, did you do at the meeting with the Federal Bureau of Investigation agents? I want to know what you did, not what you said. A. First, I called up home and then I called up the defendant.

Q. Where did you call him? A. I called him at the bar and grill on Avenue U.

Q. What is the name of it? A. Jay's Lounge.

Q. Did you recognize the voice of the defendant on the telephone? A. Yes.

Q. Would you tell the members of the jury the substance of that conversation? A. I told him I would be around later on because I was busy at work.

Q. Had you had a prior appointment to meet with the defendant, John Giglio, that night? A. No specific time.

Q. You did have an appointment to meet with him at some time on the evening of July 5? A. Yes.

Q. What happened after this phone call? A. Then one of
(67)
the special agents—I went down with the FBI to where I lived, they dropped me off, and then they picked up Mr. Giglio.

Mr. Lazarus: I ask it be stricken from the record and the jury be instructed—

The Court: Were you present at the time?

The Witness: At the time when?

The Court: At the time this happened?

The Witness: Yes.

The Court: The objection will be overruled.

Q. Can you tell us how many agents were there, to the best of your recollection? A. Two, three.

Q. Was anyone else present? A. Yes, there was, but I don't know who they were.

Q. About how many were there? By the way, were they all male? A. Yes.

Q. How many men were there altogether? A. I would say five, four or five.

Q. Where did you go to? A. Along Avenue U to about West 9th or 10th Street.
(68)

Q. Where did you meet the defendant? Did you meet the defendant? A. Yes.

Q. Where was that? A. On Avenue U between 9th and 10th Streets.

Testimony of Robert Edward Taliento

Q. Did you converse with the defendant at that time? A. Yes.

Q. Where were you conversing with him, were you conversing on the street? A. Yes.

Q. What were you doing, standing still or walking? A. Walking.

Q. How far did you walk? A. Half a block.

Q. Then, what happened? A. Then the FBI men came.

Q. Robert, I don't know if I asked you this question, but would you tell us by what name you had known this defendant, John Giglio? A. Just by the name of Junior.

Q. Would you tell us what your current occupation is? A. I am a plumber apprentice.

(69)

Mr. Golden: You may examine.

Cross-Examination By Mr. Lazarus:

Q. Mr. Taliento, when did you shave last? A. I shaved last night.

Q. Up until a few days ago, were you wearing a beard? A. Yes, for the weekend, for about a week.

Q. What type of beard did you have? A. A regular beard.

Q. How long were you wearing that beard? A. About a week or a week and a half.

Q. Was that shaved off at the suggestion of somebody in the United States Attorney's office? A. No.

Q. Since you were fired from the bank, Mr. Taliento, that was in July of 1966, what type of work have you been

doing, if any? A. I went to work for the Plumbers' Union—that was last year.

Q. When last year? A. Well, I got into the union last August.

Q. What union is that? A. The plumbers' Local union, Local No. 1.

(70)

Q. You say you are working for the union? A. Yes.

Q. What type of work do you do, sir? A. Plumbing.

Q. Do you work for a plumbing contractor or are you employed by the union itself? A. I am employed by the union and I am assigned to different contractors.

Q. Do you work regularly at that plumbing job? A. Yes, it's a full-time job.

Q. Do you work regularly? A. Yes. When it gets slow, I don't work.

Q. Between last August and this August, approximately how much money have you earned in that job?

Mr. Golden: I object, your Honor.

The Court: The objection will be sustained.

Q. How much do you make a week, if you can— A. $90 and change.

Q. Have you worked regularly since last August? A. Pretty regularly.

Q. What is pretty regularly, two days a week, three days a week?

(71)

Mr. Golden: Objection, your Honor.

The Court: What is the objection?

Mr. Golden: Relevancy.

The Court: The objection will be sustained.

Q. From July of 1960 until 1967, August, when you say you went to work for the Plumbing union—by the way, what local is that? A. Plumbers' Local No. 1.

Q. What type of work did you do before you got that job from the first time you were fired from the bank? A. Odds and ends. I worked with a moving van company. I worked in a factory for a few weeks also.

Q. What moving company did you work for? A. Global.

Q. You worked there— A. I didn't work there too long, not even a week.

Q. Were you paid? A. Yes.

Q. Did they take out deductions for social security?

Mr. Golden: Objection, your Honor.

(72)

The Court: The objection will be sustained.

Q. Were you officially on the payroll of this company? A. Yes.

Q. What other type of work did you do during that year, July of 1966 until August of 1967? A. I worked for a carpet exchange, installing linoleum.

Q. Can I have the name of that, sir? A. B and D Carpet Exchange Company.

Q. May I have the dates you worked there?

Testimony of Robert Edward Taliento

Mr. Golden: Objection.

The Court: The objection will be overruled.

A. September and October of 1966.

Q. After that, where did you work, if any place? A. I worked for a super market for a couple of days, the Big Apple.

Q. When was that? A. That is the end of '66 or the beginning of '67.

Q. Did you have any other jobs before you went to work with the Plumbers' Union? A. That's about all I remember (73)
offhand.

Q. Would it be fair to say that for a good portion of the period from July of 1966 until August of 1967, you were unemployed? A. Yes, most of the time.

Q. During that period of time, how did you support yourself, if you did? A. I was home, I didn't go no place. I didn't need anything, and if I did I got it from my parents or I didn't go out.

Q. Did you have some money stacked out somewhere? A. No.

Q. Did you have a savings account? A. No.

Q. Did you have a savings account in July of 1966? A. Yes.

Q. Where did you maintain that account? A. The Manufacturers Hanover Bank.

Q. The same branch you worked in? A. No.

Q. Where? A. This would be on West 5th Street and Avenue U.

Testimony of Robert Edward Taliento

(74)

Q. How much did you have in that account in July of 1966? A. $5.

Q. Did you have any other bank account? A. No.

Q. How old are you, Mr. Taliento? A. Presently, 21.

Q. What is your draft status? A. 2AS.

Q. Is it a fact, Mr. Taliento, that as a result of this case, that you have not gone into the Service?

Mr. Golden: Objection, your Honor.

The Court: The objection will be sustained.

Q. Have you received a deferment? A. Yes, I got a deferment for school.

Q. What school? A. The plumbing school. For the union.

Q. You received a deferment? A. That is an occupational deferment for school.

Q. You have been working at that for how long? A. Approximately a year.

(75)

Q. What was your draft status before that? A. 1A.

Q. How long a period of time was your draft status 1A, if you know?

Mr. Golden: Objection.

The Court: The objection will be sustained.

Q. Was there any time where the draft board contacted you and informed you in effect that you would not be drafted because of your status in this case? A. They never informed me that I wouldn't be drafted.

Testimony of Robert Edward Taliento

Q. Did they tell you you would be deferred and not taken while this case is pending? A. No, I probably understood my deferment was cause of school.

Q. Who did you understand that from? A. That's what I surmised.

Q. How long have you been going to plumbing school? A. A year.

Q. I beg your pardon? A. A year. I completed one year.

Q. Prior to going to plumbing school, what was the basis (76)
for your deferment at that time?

Mr. Golden: Objection.

The Court: The objection will be sustained.

Q. Your draft status was 1A in 1966, was that correct? A. Yes.

Q. At any time, did you receive any communication from the draft board? A. Yes.

Q. Were you called down? A. Yes.

Q. Did they discuss with you the possibility that you might be inducted? A. Yes.

Q. What were you told at that time? A. There is still a chance of my being inducted into the Service.

Q. Did you tell them about this case you were involved in?

Mr. Golden: Objection.

The Court: The objection will be overruled.

A. Yes.

Testimony of Robert Edward Taliento

(77)

Q. Did the government, to your knowledge, communicate with the draft board and—withdrawn.

Did the government, or someone in the United States Attorney's office, communicate with your draft board? A. I wouldn't know.

Q. Were you questioned about your draft status before the Federal Bureau of Investigation or somebody in the United States Attorney's office? A. No.

Q. Mr. Taliento, who was it that first told you that if you put somebody else in this case, that you yourself would not be prosecuted?

Mr. Golden: Objection, your Honor, to the form of the question.

The Court: The objection will be sustained.

Mr. Lazarus: I think the witness understands the the question.

The Court: The objection is sustained.

Q. Who first told you that if you implicated someone else that you yourself would not be prosecuted in this case?

(78)

Mr. Golden: Objection, your Honor.

The Court: The objection will be sustained.

* * * * *

Q. Did anybody tell you at any time that if you implicated somebody else in this case that you yourself would not be prosecuted? A. Nobody told me I wouldn't be prosecuted.

Testimony of Robert Edward Taliento

Q. They told you you might not be prosecuted? A. I believe I still could be prosecuted.

Q. You were told, were you not, that you could be prosecuted in this case, is that correct? A. Yes.

Q. Were you told that you would not be prosecuted if you testified against somebody else? A. Not that I wouldn't be prosecuted.

Q. What were you told?

Mr. Golden: Objection, your Honor.

The Court: The objection will be overruled.

The Witness: Can you repeat the question?

(The last question was read by the reporter).

A. That there is still a chance I could be prosecuted.
(79)

Q. You had a lawyer at one time, did you not? A. Yes.

Q. Prior to the time you testified before the Grand Jury, you did have this lawyer, is that correct? A. Yes.

Q. Before you went into the Grand Jury, didn't your attorney advise you in substance that if you testified before the Grand Jury that you would not be prosecuted? A. (No response).

Mr. Lazarus: Withdrawn.

Q. That you would not be a defendant in the case involving the money orders?

The Court: That is a violation of attorney-client privilege, don't you know that?

Mr. Lazarus: No, I think he has a perfect right to answer—

The Court: He doesn't have, counselor. That is a violation and that is not to be asked in this court.

Do you understand me, Mr. Lazarus?

Mr. Lazarus: I think a party has a perfect right to make a disclosure, I don't think it is privileged.

(80)

The Court: Do you have any law for that?

Mr. Lazarus: I am saying that he may disclose the conversation, that is all I am saying.

The Court: That question will not be asked in this court, Mr. Lazarus—anything that had to do with the conversation of this man with his lawyer.

Q. When you went to the Grand Jury, you went there to help yourself, right? A. I was just advised that I was supposed to be before the Grand Jury.

Q. I can't hear you. A. I don't know if I was helping myself or not.

Q. Did anybody ask you why you were at the Grand Jury if you wanted to help yourself? A. Not that I recall.

Q. Were you there, in effect, to help yourself?

Mr. Golden: Objection, your Honor.

The Court: The objection will be overruled.

(81)

Q. Answer. A. The only reason I went to the Grand Jury is because I was subpoenaed.

Q. Do you remember being asked at the Grand Jury whether you wanted to help yourself? A. I don't recall.

Mr. Lazarus: Mark this for identification, if the court pleases.

The Clerk: A document marked as Defendant's Exhibit A for identification.

Mr. Lazarus: I want to mark the whole thing for identification.

The Clerk: Exhibit A for identification marked.

Q. Do you remember being asked this question and making this answer?

The Court: That is not the way you refresh a witness' recollection. Give the document to the witness and ask him if that refreshes his recollection.

Q. I direct your attention to page 26 and I ask you to refer to lines 7 and 8.

The Court: Did you read that?

The Witness: Yes.

(82)

The Court: Does that refresh your recollection as being asked by the Grand Jury as to whether or not you were there to help yourself?

The Witness: Yes, if it is down there.

The Court: Does it refresh your recollection?

The Witness: Yes.

The Court: Were you asked that question?

The Witness: I believe so.

The Court: What was your answer to that question?

The Witness: "Yes".

Testimony of Robert Edward Taliento

Q. Referring to July 5, 1966, what time did you ordinarily finish work, Mr. Taliento? A. Maybe 4 o'clock.

Q. You usually left the bank about 4 o'clock? A. 4 or 4:15.

Q. Did you leave the bank on that day at that time? A. No.

Q. Did something happen in the bank that afternoon? (83)

A. Yes.

Q. That resulted in your staying late? A. Yes.

Q. Were you called into somebody's office or somebody's room in the bank? A. Yes.

Q. Whose room were you called to? A. Nobody's room, downstairs in the basement.

Q. Approximately what time was this? A. About 5 o'clock.

Q. Prior to that time, had you been told to stay in the bank, not to go home? A. I was still doing my work. It was a busy day after a holiday.

Q. About 5 o'clock you were summoned downstairs? A. Yes.

Q. Who did you see? A. The security guards from the bank.

Q. Do you recall their names? A. Mr. McDermott and Mr. Pallisino.

Q. And who? A. Mr. Pallisino.

Q. Did they have a conversation with you? A. Yes. (84)

Q. Was there anybody else present at that time? A. No.

Q. Some time that afternoon or early evening, were agents of the FBI present or agents identified to you by anyone as members of the FBI? A. Yes.

Q. What time was that, approximately? A. 9:30 or 10 at night.

Q. Were you in the same room from approximately 5 o'clock until 9:30 or 10? A. Then I was upstairs sitting in the bank.

Q. What did the security officials from the bank question you about? A. About the money orders.

Q. Did either of those security officers tell you that if you indicated to them that somebody else was involved in anything you had done, that they would try to help you? A. No.

Q. I beg your pardon? A. No.

Q. Was there any discussion at that time along those lines? A. No.

(85)

Q. Do you know the name of the agents of the FBI who were present later that evening? A. Mr. Kelly and Mr. Axten.

Q. Was there any discussion of that type with any of the FBI agents? A. (No response).

Q. Was it indicated to you in any form that if you cooperated with the government or with the agents, if you indicated to them that somebody else might be involved with you, that things would be easier for you? A. No, I don't believe so.

Q. Was there any discussion in any form along those lines? A. No, I don't believe so.

Q. Were you, at any time, asked whether you in any way wished to make things easier for yourself or to help yourself? A. No.

Testimony of Robert Edward Taliento

Q. How long were you questioned that night at the bank?

Mr. Golden: Objection: I would like him to specify by whom. I object to the general form of the question.

(86)

The Court: The objection will be sustained.

Q. How long were you questioned in the bank that afternoon and evening by anybody? What is the total time that you were questioned? A. Six or seven hours.

Q. Who did most of the questioning? A. The security guards from the bank.

Q. Mr. Taliento, you have not been indicted in this case, have you? A. Not as far as I know.

Q. As far as you know, you are not under indictment anywhere, either in the State or Federal Court? A. No.

Q. You have never been charged with any crime as a result of you activities in this case, have you? A. If I'm still—I could be prosecuted I guess—they could charge me with something.

Q. Were you ever arrested in this case or charged with anything in connection with these money orders that you testified to? A. Not at that particular time.

(87)

Q. To this date, have you been charged with any crime? A. Not that I know of, unless they are still going to prosecute.

Q. Up to this time, up to this time, have you been charged with any crime? A. No.

Q. Were you told just before the start of this trial that if you didn't come in here and testify that you might be

indicted? A. I was told I still could be indicted.

Q. When was the last time you were told that?

Mr. Golden: Objection, your Honor.

The Court: The objection is overruled.

Mr. Golden: I object to the form of the question, it characterizes a last time.

The Court: That objection will have to be sustained.

Q. You say you were told prior to the trial that you could be prosecuted? A. Yes.

Q. When was it? A. Last week, or some time during the week.

(88)

Q. Where did it take place, in the United States Attorney's office? A. Yes. I believe one place was there.

Q. I can't hear you. A. One place was there. One time it was there.

Q. Was that last week? A. That would be during the last week.

Q. Who told you that? A. I believe the FBI agent told me I still could be indicted.

Q. Do you know who told you that last week A. So many people told me the same thing—

Q. Could you tell me how many? A. I couldn't give you a number, maybe a few people.

Q. Who were some of them? A. One thing, my lawyer told me.

Q. Who else told you that? A. I guess the United States Attorney.

Q. You say you guess. Somebody told you this last week, is that correct? A. Yes.

Q. Today is Monday, when you say last week, you are referring to the week immediately preceding this Monday?
(89)
A. Yes.

Q. What day of the week was it that you were told this? A. Practically every day out of the week.

Q. Were you at the United States Attorney's office each day this week? A. Last week?

Q. Yes. A. Yes, Wednesday, Thursday and Friday.

Q. Who made this statement to you on Wednesday, if somebody made it to you? A. I was told by the United States Attorney, Wednesday.

Q. Who was that? A. I believe Mr. Golden might have told me Wednesday.

Q. Did anybody else tell you the same thing on Wednesday? A. My lawyer told me Wednesday, too.

Q. Who else? A. The FBI agent, Mr. Axten.

Q. Do you know the name of the agent? A. I said, Mr. Axten.

Q. Were you told, if you did not testify, that you would be indicted? A. If I didn't testify?
(90)

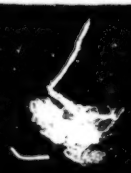
Q. Yes. A. Chances are I still could be indicted.

Q. Were you told if you did testify you would not be indicted? A. I was told I still could be indicted.

Q. You said before, Mr. Taliento, that you were told that you could still be indicted? A. Yes.

Q. I believe you also testified that—withdrawn.

Were you told if you did not testify that you surely would be indicted? A. No, I still could be indicted, not that I surely could be.



Q. Were you reminded, were you not, consequently, that you still could be charged with some crime in this case although you haven't been to date, is that correct? A. Correct.

Q. Now, Mr. Taliento, you are not married, are you? A. No.

Q. How long do you know the defendant?

(91)

Q. Did he know your name? A. I don't think so. He might have heard it.

Q. When you went up to him, did you introduce yourself in some form? A. I said, "Hello."

Q. You said, hello? A. I don't remember two and a half years ago exactly how I met a person.

Q. Were you working in the bank at that time? A. Yes.

Q. Did you tell him at that time that you were working in the bank? A. I don't believe so.

Q. Was this a very casual type of relationship? Would you characterize it as that? A. Yes.

Q. Do you know what the word "casual" means?

Withdrawn.

Was it a type thing where you saw somebody and said, "Hi," or something to that effect? A. Yes, more or less.

Q. By what name did you know the defendant? A. Junior.

Q. Did you ever know him by any other name? A. No.

(92)

Q. Do you know somebody named Julio? A. That's what I understood his nickname was. I heard—Junior or Julio sounds the same to me.

Q. Did you know him as junior or Julio? A. Junior.

Q. You never knew him by the name Julio? Yes or no? A. No.

Q. Is it a fact that when you were questioned on July 5th by the FBI and the security agents in the bank that you told them somebody by the name of Julio had given you certain traveler's checks? A. Yes, sir.

Q. Between December of 1965 and June of 1966, how frequently would you see the defendant? A. A couple of times.

Q. How many is a couple of times? A. Four or five times.

Q. Were these casual meetings, these four or five times that you saw him? A. Yes.

Q. It was just a question of hello and goodby? A. "How (93)
are you?"

Q. That basically was the extent of your conversation with him? A. Basically.

Q. Did you go to dinner with the defendant? A. Excuse me?

Q. Did you go to dinner with him? A. No.

Q. Did you go out with him socially? A. No.

Q. Did you drink with him? A. No.

Q. After December of 1965, can you recall approximately when you saw him next? A. Maybe a week or so later, I don't know.

Q. Where did you see him at that time, if you know? A. The same location, my neighborhood, Avenue U.

Q. Did this defendant, to your knowledge, live in that area? A. I don't know exactly where he lives, but I figured it was in the area.

Q. When you saw him the second time, can you tell us what this meeting was like? A. (No response).

(94)

Q. What took place? A. What meeting is that?

Q. The second time that you ever saw this defendant. You say you saw him once around Christmastime in 1965, and you saw him a week or so later, is that correct? A. Yes.

Q. Tell us about that meeting, what was it? A. "Hello, how are you?" It was more or less like that.

(95)

Q. How long do you say you were in the presence of the defendant at that time? A. A few minutes.

Q. Do you recall when you might have met him again after that? A. Maybe a month or so.

Q. Was that meeting about the same you just described? A. Yes.

Q. Would it be fair to say that before late June, 1966, your relationship with the defendant had been nothing more than basically hello and goodby? A. Casual.

Q. That is a fair statement? A. Yes.

Q. You never socialized with him during that time, did you? A. No.

Q. You didn't drink with him? A. No.

Q. Eat with him? A. No.

Q. You didn't go out with him, did you? A. No.

(96)

Q. Had you met his family or anything? A. No.

Q. Had you been to his home? A. No.

Q. Had he been to yours? A. No.

Q. Would you say he didn't even know your last name at that time? A. I wouldn't know.

Testimony of Robert Edward Taliento

Q. You say there came a time in late June of 1966 where you met the defendant, is that correct? A. Yes.

Q. Where did that meeting take place? A. The same vicinity, my neighborhood.

Q. Where did this particular meeting—can you give us a better answer on this particular meeting in late June of 1966? A. Avenue U and West 9th or 10th Street.

Q. Was it in the street? A. It would be on the Avenue.

Q. You haven't forgotten that day of June 22nd, have you? A. June 22nd?

Q. 1966. Does that date mean anything to you? A. It's (97)

a couple of years ago—June 22nd.

Q. You recall having a meeting with the defendant on June 22nd, 1966? A. Around that time. I don't know if it was definitely the 22nd.

Q. You and the defendant spoke about something at that time, is that correct? A. Correct.

Q. All your other meetings you said were just casual hellos and goodbys? A. Yes.

Q. Where did the meeting on June 22nd, 1966 take place?

Mr. Golden: Objection. The question has been asked and answered.

The Court: The objection will be overruled.

A. The same vicinity as I said before.

Q. I don't know the vicinity, I would like you to tell me if you can exactly where you stood and talked to this defendant on June 22nd, 1966? A. Avenue U and West 9th Street.

Q. Were you sitting on the curb? A. No.

(98)

Q. Were you leaning against a pole? A. No, standing on the corner.

Q. What corner? A. Avenue U and West 9th Street.

Q. Do you know which corner? A. No, not really. Right around there.

Q. About what time was it when you met him? A. I think the time was maybe 8 or 9 o'clock.

Q. Do you remember what the defendant was wearing at that time? A. No.

Q. Did he have a suit on, do you know? A. I don't recall.

Q. Is that a crowded street right there? A. Fairly.

Q. Are there a lot of pedestrians? A. During the daytime, it is fairly busy.

Q. In the evening? A. Sometimes.

Q. There are a lot of stores on that street? A. Yes.

Q. Would you say it is a fairly large shopping area in the neighborhood? A. Yes.

(99)

Q. There is a supermarket right there? A. Yes.

Q. And a lot of other stores? A. Yes.

Q. Would it be fair to say, in the early evening, this neighborhood is generally crowded with pedestrians, people walking the streets? A. Not at that time.

Q. What time? A. 8 or 9 o'clock at night.

Q. Is that— A. All the stores are closed.

Q. It's got a lot of bars and restaurants in that street? A. Just one.

Q. One bar? A. That's all.

Q. Any restaurants? A. At that time, there weren't.

Q. Who approached who that evening of June 22nd, did the defendant come up to you or did you go up to him? A. This was a casual meeting.

Q. Up to that point, you didn't know if you ever told the (100)
defendant you worked in a bank, did you? A. I don't remember telling him I worked in the bank.

Q. Do you remember having any conversation with him before that night? A. Concerning what?

Q. Anything. A. Not really.

Q. Who began the conversation that night, do you know? A. I can't say. If I started it or the defendant started it, I don't know.

Q. What do you say the defendant said to you that night of June 22nd? A. The 22nd?

Q. Yes, sir.

Mr. Golden: Objection, your Honor, on the ground that he assumes facts not in evidence. I think the witness' testimony is not that quite precise.

The Court: This first conversation, Mr. Taliento, what did the defendant say?

The Witness: If I had any—if I could cash some checks for him.

(101)

Q. Is that exactly how he phrased it? A. They might not be the exact words, but that was it.

Q. What else did he say? A. That is—I said, "Surely."

Q. I'm sorry? A. He asked me if I would cash some checks for him and that is the main question he asked me.

Q. Was that the entire conversation? A. No.

Q. Tell us what the rest of the conversation was? A. I said, "Sure, but I want to see what kind of checks they are."

Q. Was there anything else to the conversation at that time? A. Not that I believe.

Q. Did you allegedly make a deal that night with somebody, with this defendant? A. Can you explain what you mean?

Q. Do you understand what the word "deal" is? A. Yes.

Q. Do you know what a crooked deal is? A. Yes.

(102)

Q. Did you make some kind of a crooked deal that night? A. No.

Q. Did you have a conversation with some kind of a deal— A. Not that night.

Q. When did you have a conversation about a deal? A. A few nights later. A couple of nights later.

Q. Had this defendant ever done any check cashing with you prior to June 22nd or thereabouts in 1966? A. No, sir.

Q. Had he ever spoken to you other than to say hello or goodby before that time? A. No.

Q. Had you asked him about these checks he wanted cashed? A. I asked him what kind of checks they were.

Q. What did he tell you, if anything? A. Just show me what they were.

Q. You say he showed them to you at that time? A. No.

(103)

Q. How long did all of this take?

Mr. Golden: I object, your Honor.

The Court: The objection will be overruled.

Mr. Golden: Specifically, I don't know which conversation he is talking about.

Specify the date.

Mr. Lazarus: I think it is clear. I asked him about June 22nd, that is what we are talking about.

Q. The first time you discussed checks with the defendant, how long did that whole conversation take? A. Maybe ten minutes.

Q. Ten minutes? A. Around that.

Mr. Lazarus: Judge, there is a request from the jury that the witness keep his voice up.

The Court: Mr. Taliento, would you please keep your voice up.

Have you been able to hear the witness?

Juror No. 1: On occasions, no.

Q. During this approximate 10 minutes, was that the (104)
entire substance of the conversation that you recall? A. Yes.

Q. When was the next time that you say you saw the defendant? A. It would be a couple of days later—two or three days.

Q. Where did this meeting take place? A. The same as before.

Q. Did you make an appointment to meet again? A. He said, "I will see you in a couple of days."

Q. Who said that? A. The defendant said, "I will see you in a couple of days."

(105)

Q. You didn't have a meeting with him at a particular time or a particular place, did you? A. Yes, I would just see him in a couple of days.

Q. You didn't set any particular day or time, did you, or did he? A. No. No particular date.

Q. Do you recall how many days later you did see the defendant? A. Maybe two or three days.

Q. Maybe four days? A. No, I don't think four days, two days, three days tops.

Q. Where did this meeting take place? A. The same as before.

Q. When you say the same, were you standing in the same spot in the street or were you standing in some other spot? A. In think it was the same spot.

Q. Think back and tell us if this was the same spot that you were talking in? A. Avenue U and West 9th Street.

Q. Do you know which corner? A. I think it was the bar on the corner, that corner.

Q. Who got there first, you or the defendant? A. I

(106)

couldn't say. Nobody got there first that I recall.

Q. When you say nobody got there first, when you arrived, did you see the defendant there? A. We both were there at the same time.

Q. Is this a street corner you hang around once in a while? A. Yes.

Q. How long have you lived in that neighborhood? A. 21 years.

Q. Who did you hang around that street corner with? A. My friends. Usually, on the block that I lived on.

Testimony of Robert Edward Taliento

Q. Who are some of the friends you hung around with? A. On that corner, nobody in particular.

Q. Who are some of the friends you hang around that neighborhood with? A. Friends that I live with.

Q. I would like you to give me the names of some of the friends? A. I don't stand on the street corner with my friends—I don't.

(107)

Q. Who do you stand on the corner with? A. Nobody, I just walk up to the corner.

Q. What do you do when you are there? A. I don't do anything. I am on the corner, say, and I strike up a conversation with somebody I know. And it is no one in particular.

Q. Who are some of the friends you hang around the corner with? A. As I said, I don't hang around with nobody on the corner.

Mr. Golden: Objection, your Honor.

Q. Do you have any neighborhood friends? A. Yes, where I live.

Q. How far do you live from this corner? A. Half a block.

Q. You have been hanging around the corner for a good number of years? A. I live in the neighborhood.

Q. I didn't ask you that. You have been hanging around the corner for a good number of years? A. No.

Q. Is there some kind of location there that is a local hangout for people approximately your age, friends of yours? A. There is a bar on the corner if that is what you

(108)

are trying to imply. Me and my friends don't hang out in there.

Q. Where do you and some of your contemporaries, your friends, hangout in this neighborhood? A. We don't go no place in the neighborhood, we stand on the block itself.

Q. On the corner? A. Not every single night.

Q. Sometimes? A. Once in a while.

Q. Particularly in the warm weather? A. Yes, sometimes.

Q. Who are the people that you hangout with? A. I don't hangout with nobody on the corner.

Q. Where do you hangout? A. I usually go to Long Island.

Q. Is there a pool room in that neighborhood? A. No.

Q. Do you hangout in any pool room? A. No.

Q. Is there a candy store or pizza place where you hang out? A. We don't hang out no place.

(109)

Q. You don't hang out no place? A. No.

Q. You said after June 22nd, you met the defendant some time later? A. Yes.

Q. That was on the same corner? A. Yes.

Q. You say you didn't have an appointment with him? A. Not a definite appointment.

Q. What time did you get to that corner? A. About 8 o'clock or 9 o'clock.

Q. How long were you around there before you saw Mr. Giglio? A. Not long, a couple of minutes.

Q. When you first got there, were you with anybody? A. No.

Q. Are you sure about that? A. As far as I recall, there wasn't nobody.

Q. Were you standing there by yourself? A. I just walked to the corner, I was with my friends before that.

Q. Who were you with before? A. A couple of my
(110)
friends.

Q. Who are they? A. Just friends of mine.

Q. Could you name them for me, if you please? A. Just my friend Ralphie. I am not saying definitely.

Q. Ralphie who? A. Basso.

Q. Who else were you with? A. I don't know.

Q. Would you say this was about two days after you had first spoken to the defendant? A. Yes.

Q. When you first spoke to the defendant about checks on June 22nd, you didn't have any conversation with him about a deal or making some money or something of that sort? A. No.

Q. Is it fair that all you were asked is would you cash the checks? A. Correct.

Q. The second meeting, do you know what date that was? A. About the 24th.
(111)

Q. Was this a Friday? A. No, it wasn't a Friday, it was during the week.

Q. June 24th, 1966, was a Friday; would that refresh your recollection whether this may or may not be a Friday? A. Maybe the 23rd, I know it was during the week.

Q. How do you know it was during the week? A. Because I went to work the next day.

The Court: We will take our morning recess at this time.

Do not converse or communicate amongst yourselves or anyone else or do not form or express any opinion of the case until it is finally given to you.

The jury is excused.

(A recess was taken at this time.)

(112)

The Court: Bring the jury in.

Is it stipulated that the jury is all present in their proper places?

Mr. Golden: Yes.

Mr. Lazarus: Yes.

Q. Mr. Taliento, I believe before the recess you testified that your meeting of June 22nd, approximately June 22nd, 1966, was the first conversation you had ever had with the defendant about checks, is that correct? A. Yes.

Q. At that time, you say he asked you if you could cash certain checks? A. Correct.

Q. Was that the extent of the conversation that you had with him on June 22nd?

Mr. Golden: Objection, your Honor. This conversation has been testified to and characterizing it to the extent of the conversation is clearly unfair.

The Court: The objection is overruled.

A. That is I just wanted to see what these checks were and he said he would see me in a couple of days.

(113)

Q. Were you told at that time that these checks were stolen? A. No.

Q. Were you told there was something wrong with these checks? A. No.

Q. You are sure about that? A. Yes, I am sure about that.

Q. Mr. Taliento, do you recall the date of July 5, when you were in the bank, that you wrote out a statement? A. Yes.

Q. Do you also recall writing out a statement in your own writing on July 7th, 1966? A. I don't remember if I wrote it out myself or not.

Mr. Lazarus: May I please mark these two documents for identification.

The Clerk: One document marked Defendant's Exhibit B for identification and one document marked Defendant's Exhibit C for identification.

Q. Mr. Taliento, I show you a paper, Defendant's Exhibit B for identification, and I ask you if you recognize

(114)

that? A. This is not in my writing.

Q. Do you recognize it? A. That was the statement I gave on the 5th, July 5th.

Q. Who wrote that? A. That would be one of the security guards—the security agents for the bank.

Q. Were you talking to him at the time he wrote this? A. Yes.

Q. After he wrote it, did you read it? A. Yes.

Testimony of Robert Edward Taliento

Q. Did you put your initials on it? A. On the corners.

Q. On each page? A. Yes.

Q. Also, at the end of this document, you signed it? A. Yes, that is my signature.

Q. Did you read it before you signed it? A. Yes.

Q. On July 5, 1966, at the bank, did you tell the security officers who were questioning you that on June 22nd, 1966, that somebody named Julio— A. Yes.

(115)

Q. Wait until I finish my question.

Had told you he had some stolen Traveler's Express money orders? A. Well, can I explain?

Q. No. Please don't explain, just answer the questions. A. That he had money orders—no.

Q. Just answer the question.

Mr. Golden: I believe the witness was answering the question when he was interrupted by counsel.

The Court: Can you answer the question?

The Witness: Can I explain?

The Court: Can you answer that question? Did you tell the officers that?

The Witness: Yes, but I would like to explain.

The Court: What is your explanation?

The Witness: When he said stolen, that word was substituted that day on the 5th when they came back.

Q. When you were talking to the security officers in the bank on the night or afternoon of July 5th, 1966, did you tell

(116)

those people who were questioning you that on June 22nd,

1966, somebody named Julio told you that he had some stolen money orders? A. I just answered that, yes.

Q. Did you tell that to the security officers on July 5th, 1966? A. Yes. That's what I just said.

Q. Did you tell them that on June 22nd, 1966, that you knew those money orders were stolen? A. I didn't know on June 22nd.

Q. Mr. Taliento, I show you Defendant's Exhibit C for identification and ask you if you recognize that? A. Yes.

Q. Is this document in your handwriting? A. No.

Q. Whose handwriting is it in, if you know? A. One of the FBI agents.

Q. Did you sign this document, on page 6? A. Yes.

Q. Was this something you dictated to the FBI agent? A. They were questions, and he was writing it down.

Q. Was this on July 7, 1966? A. I believe so.

(117)

Q. At that time, did you tell the FBI agent that was questioning you that on June 22nd, you were asked to cash money orders which had been stolen? A. Yes.

Q. So that on June 22nd, you knew that the money orders were stolen, is that correct? A. No, not until they came back to the bank.

Q. Is it correct that on June 22nd, 1966, when you say you had a conversation with this defendant about some money orders that you knew those money orders were stolen? A. No.

Q. I show you Defendant's Exhibit B for identification and ask you if the first page bears your initials? A. Yes.

Q. Did you read this before you put your initials on it? A. Yes.

Testimony of Robert Edward Taliento

Q. Who actually wrote these pieces of paper, do you know? A. It was one of the FBI agents.

Q. I am referring to July 5th. A. One of the security
(118)
guards.

Q. Did you say to one of the security guards who was questioning you at that time that you were approached by somebody named Julio and he told you he had some stolen Traveler's Express checks? A. That's what I said in there.

Q. Did you read this page and put your initials on it at that time? A. Yes, I put it on after the thing was written out.

Q. Was it true when you said it? A. That is what I said, but I didn't—can I explain? I explained before.

Mr. Lazarus: Bear with me for just one minute, your Honor.

Q. You say between this first meeting when you first discussed the checks—withdrawn.

After you first discussed the checks, it is your testimony it was a day or two before you saw the defendant again? A. About a day or two.

Q. That meeting took place on Avenue U? A. Yes.

Q. Do you recall what day that was? Do you recall what day of the week that was? A. The beginning of the week.
(119)

Q. The beginning? A. Yes, around the beginning of the week.

Q. You say the first conversation took place about the 22nd of June, is that correct? A. Correct.

Testimony of Robert Edward Taliento

Q. And the next conversation you stated took place a day or two later? A. Correct.

Q. Was the first conversation during the week or on the weekend, do you recall? A. The beginning of the week, maybe about Monday.

Q. When would the second conversation take place, if you recall? A. The second conversation?

Q. Yes. A. Wednesday night or Thursday night.

Q. Wednesday night or Thursday night? A. Yes.

Q. The first time was on June 22nd when the defendant spoke to you, didn't you know at that time that you were supposed to be involved in some deal where you were going to make some money? A. No, not at that time.

(120)

Q. But you did tell the security officers and the FBI that when Julio approached you on June 22nd, that he spoke to you about some stolen money orders, is that correct? A. Yes, but—

Q. Just answer yes or no, sir. A. Yes.

Q. When did you make some kind of a deal about these Traveler's checks, when, for the first time, did you? A. That was the second meeting.

Q. The second meeting? A. Yes.

Q. That took place in the same place? A. Yes.

Q. What time of the day or night was that? A. The same time, around 8 or 9 at night.

Q. What time, do you recall specifically? A. No.

Q. Where were you at that time? A. In the same area.

Q. Can you be a little more specific where you were standing with the defendant? A. The corner of Avenue U and West 9th Street.

(121)

Q. In front of some particular place, a store or establishment? A. No, there is a bar on that corner.

Q. Was it in the bar? A. No.

Q. What is the name of that bar? A. Jay's Lounge.

Q. Did you ever go into that bar? A. Yes.

Q. Did you ever see the defendant in that bar? A. Once or twice, a couple of times.

Q. You went with him when he went to the bar? A. No.

Q. You came in? A. I just happened to walk in.

Q. You were not in the bar with the defendant? A. No.

Q. You had seen him there? A. Yes.

Q. When you met the defendant, on the second occasion, what did you call him? A. Junior, Julio—I don't remember.

Q. You called him Junior? A. Yes.

(122)

Q. Who spoke first on the second meeting, if you recall? A. I don't recall.

Q. Did you see any checks that night? A. Yes.

Q. I beg your pardon? A. Yes.

Q. What type of arrangements did you make at that time? A. That I would cash the checks for him.

Q. Anything else? A. No, that is the main basis of the agreement—not agreement, the conversation.

Q. Did you talk about anything else at that time? A. That I would cash the checks.

Q. What else did he say to you and what else did you say to him? A. If I could cash the checks, and I said, "Yes."

Q. Is that the same conversation you had on the 22nd? A. Yes.

Testimony of Robert Edward Taliento

Mr. Golden: Objection, your Honor. I think that
(123)
counsel interrupted the witness.

The Court: The objection is sustained.

Q. What else was said at that time on the second meeting? A. If I could cash the checks and what name should I put on the checks.

Q. Anything else? A. I said a name from a customer in the bank.

Q. Anything else? A. I could tell him what name to put on the checks.

Q. Other than that, was there anything else discussed at that time? A. Not that I recall.

Q. Were you supposed to get some money from this? A. Yes.

Q. Was that discussed? A. No, no particular amount.

Q. You didn't have any deal where you were supposed to get a fixed figure? A. No.

Q. Was this something you were going to wait and see what happened? A. Yes, more or less.
(124)

Q. In other words, you had no agreement as to what you were going to get? A. No definite set figure.

Q. Mr. Taliento, do you recall testifying before the Grand Jury in this case? A. Yes.

Q. I direct your attention to Defendant's Exhibit A for identification, specifically page 32, and ask you to look at first beginning with line 4 through line 7, and I ask you if that refreshes your recollection as to any questions that

might have been asked of you and the answers you made? A. Yes.

Q. Did you say—did you tell the Grand Jury that you had made a deal and you were supposed to get 25 percent of the proceeds of any checks you cashed? A. Since that—

Q. Did you so testify before the Grand Jury? A. Yes.

Q. Did you testify under oath when you testified before the Grand Jury? A. Yes.

Q. Is that the same oath or similar oath you took when you took this witness stand, sir? A. Yes.

(125)

Q. You told the Grand Jury you had a deal where you were supposed to get 25 percent of the proceeds, is that true? A. Yes.

Q. When did you make that arrangement? A. No percentage was said, but since I received that amount, it worked to about 25 percent.

Q. You say on your second meeting you had no discussion about any amount? A. No.

Q. How much were you supposed to get on the night of July 5th? A. (No response).

Q. When you say you had the deal with the defendant, Giglio. A. I figured it out to about seven or seven fifty.

Q. Were you present when this defendant was searched on that night? A. Yes, I was present.

Q. Were you there when they searched him? A. Not actually searched.

Q. Were you there when they took some money out of his pocket? A. No, I didn't see that.

(126)

Q. Is it your testimony that on the second occasion you had no conversation with anybody about what was in it for you? A. No.

Q. That was the middle of the week, you say, is that right? A. Yes, Wednesday or Thursday.

The Court: Mr. Taliento, keep your voice up. You keep dropping your voice.

Q. You told the bank officials and the FBI that on July 5th the checks you were talking about were stolen? A. Correct.

Q. And you knew you were being asked to cash stolen checks, is that right? A. Checks, but I didn't know they were stolen until they came back the 5th.

Q. In other words, June 22nd, when you had this first conversation, and the next day when you—the next time you met the defendant, you didn't know there was anything wrong with the Traveler's checks, is that correct? A. No.

(127)

Q. At that time, you did have a conversation about what was in it for you? A. (No response).

Q. Is that correct? A. No certain amount.

Q. But you were supposed to get something? A. Yes.

Q. You did testify before the Grand Jury that you were supposed to get 25 percent, is that correct? A. Yes.

Q. When was the next time that you say you saw the defendant, Giglio? A. What time was that?

Q. After the second time. A. The weekend just before the 4th of July. Not the 4th of July, before the 27th.

Q. I beg your pardon? A. The weekend just before the 27th of June.

Q. Before the third meeting, is it your testimony that you had no understanding or arrangement with anybody as to what your end of this thing was supposed to be? A. Right.

Q. At that time, prior to the third meeting, did you re-
(128)
move certain records from the bank? A. Yes.

Q. You removed a signature card, is that correct? A. Yes.

Q. Were you doing somebody a favor at that time when you removed that signature card or were you doing it for money? A. I wasn't doing it for money, just a favor.

Q. Just a favor? A. Yes.

Q. Tell us about this third meeting? A. The third meeting?

Q. Yes. Do you recall the date of it? A. No, that weekend before June 27th.

Q. Before the 27th? A. Yes.

Q. Is that the best you could do? A. Yes. Probably a Friday night or Saturday.

Q. Before you took the witness stand in this case, did you discuss your testimony with the United States Attorney? A. Yes.

Q. Did you read over certain statements? A. Yes.
(129)

Q. You discussed the testimony for quite a few days, is that correct? A. Friday, Thursday.

Q. What day was it when you saw him the third time or what day do you say it was? A. It must have been Friday night or Saturday.

Q. It could have been either day, is that correct? A. Correct.

Q. Most likely, it was Saturday? A. I couldn't say.

Q. Was it at night or during the day? A. I would say at night time.

Q. Where did this meeting take place? A. On the corner of Avenue U and West 9th Street.

Q. Was that by pre-arrangement? A. Once I get a name or a card, I see him over the weekend.

Q. You had discussed this card in the prior meeting, is that right? A. Yes.

Q. Did you say when and where you were to meet over the weekend at that time? A. The night time on the corner. (130)

Q. You just said sometime over the weekend? A. At night time, Friday night or Saturday night.

Q. Would you tell us about this third meeting? A. The third meeting?

Q. Yes. What took place? A. I handed him the signature card.

Q. Did you say anything to him when you first saw him? A. Yes, "Hello, how are you?" And then I handed the signature card over to him and then we agreed on Sunday night.

Q. Prior to this time, had you see any checks? A. Yes, the second meeting.

Q. That was on Wednesday, approximately a Wednesday? A. Wednesday or Thursday.

Q. Did you examine those checks? A. Yes.

Q. You say you had the signature card on a Friday or Saturday, is that right? A. I gave it to him on Friday or Saturday.

(131)

Q. Prior to that time, you say you had seen these checks? A. Yes, the second meeting, Thursday or Wednesday.

Q. Did you ever say at any time that you weren't sure whether you had seen them prior to the time you gave the signature card to the defendant? A. Do I remember saying that, that I wasn't sure?

Q. Yes, whether you had seen any checks. A. Yes, at one time I did say that.

Q. At the time you said you weren't sure, was that the truth? A. At that time, yes.

Q. Do you recall when that was when you had said you weren't sure? A. That was back in '66.

Q. But at the time you said that, that was the truth, is that correct? A. Yes.

Q. Now, how did you go about getting a signature card? A. I just took it out of the little files. I just took it out.

Q. Did you put it in your pocket? A. I guess I put it in my pocket.

(132)

Q. Do you recall what time of day it was that you took this card out? A. No, I think it was in the afternoon.

Q. This was between the second and third meeting that you had in connection with these checks that you removed the signature card, is that right? A. Yes.

Q. So that the second meeting you had, did you know that these checks that you were being asked to cash were stolen? A. No.

Q. Why did you take the signature card out of the bank? A. To put a name on the checks to have them cashed. The defendant did not have an account at my bank.

Q. On the second meeting you had with the defendant, you didn't know there was anything wrong with the checks, right? A. Correct.

Q. Between the next meeting and the meeting during the week, you removed the signature card? A. Between the second and third meetings, right.

Q. How many other times had you taken signature cards out of that bank? A. Never.

(133)

Q. Did you take other records home from the bank on occasion? A. No.

Q. This is the first time you ever took a signature card out and took it home? A. Right.

Q. Did you pick out the particular card—withdrawn.

What was the name on the card you took out? A. George Cohen.

Q. Did you have any particular reason for taking that name? A. No, it was just a common name.

Q. Did you know a customer at the bank named George Cohen? A. A few.

Q. Did you know one by the name of George Cohen? A. Not personally, he used to come in.

Q. Would you recognize a George Cohen as a customer of yours, was it somebody that came to your window? A. I never seen him that much.

(134)

Q. Had you seen him on a few occasions? A. I couldn't say, but I know he was a frequent customer at the bank and he deals through somebody else.

Q. Was he a big money order casher? A. A few, or deposits.

Q. Did you pick out the name of George Cohen for a particular reason? A. No, just because there was a few people by the name of Cohen.

Q. What was suppose to happen to this name of Cohen after you took the signature card out of the bank? A. It was supposed to be put on the checks.

Q. You say at your last meeting you didn't know there was anything wrong with the checks, is that correct? A. Correct.

Mr. Lazarus: Your Honor, may I respectfully request this begin our noon recess?

The Court: No, we will take our noon recess at 1 o'clock, Mr. Lazarus.

Mr. Lazarus: All right.

Q. How long did this meeting last on the 24th? A. The
(135)
24th?

Q. I am sorry, withdrawn.

Do you recall what day of the week it was that you took the signature card from the bank? A. The end of the week; Friday.

Q. How long did this meeting last, the third meeting after you took the signature card? A. Not long, maybe a few minutes.

Q. What was the defendant wearing at that time, do you know? A. I don't recall.

Q. Did he have a suit on, do you know? A. I couldn't say.

Q. Was he dressed in sport clothes? A. I couldn't say.

Q. What were you wearing? A. I couldn't say. Probably a pair of slacks and a shirt.

Q. Was the street crowded that night? A. No, not particularly.

Q. Was it at night that you saw him for the third time? A. It would be at night.

(136)

Q. Friday night is a busy night in that neighborhood, is that right? A. I am not in that neighborhood on Friday nights.

Q. What neighborhood are you in? A. Out in Long Island.

Q. You were there this Friday night, though, weren't you? A. Yes.

Q. Where on Long Island? A. Shirley, Long Island.

Q. Do you have friends out there? A. Yes.

Q. Do you have a home out there? A. A summer home.

Q. Your parents have it? A. Yes.

Q. You lived in this neighborhood all your life? A. Yes.

Q. Friday night is a busy night on West 9th Street and Avenue U? A. I guess so.

Q. Do you know whether it is or not? A. No, I wouldn't know.

(137)

Q. Ordinarily, is Friday night a night where a lot of people are out in the street, particularly a Friday night in June? A. I guess there would be. I usually am away on weekends.

Q. You weren't away this weekend, were you? A. No.

Q. What was the street like that night? A. Getting dark out.

Q. Who got to the corner first, you or the defendant? A. I couldn't say. Probably we were just both there.

Testimony of Robert Edward Taliento

Q. Did you see him first or did he see you first and come over to you? A. That, I don't remember.

Q. Were you with anybody? A. No.

Q. Did you have a jacket on? A. I don't know, I don't think so. I doubt it.

Q. Where did you have the signature card ? A. In my pocket.

Q. You are sure about it? A. Not sure, but that is the most likely place I would have it.

(138)

Q. Who spoke to whom first that night? A. I don't remember that.

Q. What was said between you, do you recall that? A. Yes, I handed him the signature card and that I would meet him Sunday night.

Q. Anything else? Was anything else said? A. (No response).

Q. If you recall? A. That I would meet him Sunday night.

Q. I cannot hear you. A. I would meet him on Sunday night.

Q. This time, did you say, I will see you around? A. No, Sunday night.

Q. How long did all of this take? A. The third meeting?

Q. Yes. How much time did it consume? A. Maybe a few minutes.

Q. Did you go into the bar that was nearby on that night with the defendant? A. No, I don't believe so. No, I wouldn't go into the bar with the defendant.

(139)

Q. Where did you go after you left the defendant that night, do you know? A. Probably on the block with my friends, maybe, or otherwise upstairs.

Q. Do you know where you went that night? A. No.

Q. Where did you keep that signature card when you got home from work that night? A. Probably hanging up in my jacket.

Q. Were you nervous when you left the bank that day? A. No.

Q. Were you afraid that possibly somebody might notice that signature card you had with you? A. No, I wasn't worried.

Q. Do you think the bank would have objected if they saw you walk out with the signature card? A. I guess so.

Q. On this third occasion, did you have any discussion as to what was in this whole thing for you? A. No, just that it would be worth my while.

Q. I beg your pardon? A. That it would be worth my while.

Q. That was the first time that anything that might inure

(140)

to your benefit was discussed? A. Correct.

Q. Prior to that, you had no idea that you were to profit in some way from what you were doing here? A. Not profit in any way.

Q. Were you doing this as a favor? A. Yes.

Q. Just to be a nice guy? A. Correct.

Q. Sort of an accommodation, would you say? A. Correct.

Q. How many other people have you accommodated in a similar fashion, Mr. Taliento? A. What do you mean by that?

Q. Tell me which word you don't understand. A. I understand. You mean by cashing checks?

Q. No, sir. A. Doing favors for—

Q. You just answer the question as best you can. A. (No response).

Mr. Lazarus: Read the question back.

(Whereupon, the last question was read by the (141)
reporter.)

Mr. Golden: I object to that question.

The Court: The objection will be overruled.

Mr. Golden: I object to the form of the question on the grounds that it assumes facts not in evidence.

The Court: The objection is overruled.

A. I never cashed any checks in that manner for anybody else.

Q. How many other people have you accommodated by taking records out of the bank? A. I never took any records out of the bank.

Q. You were just doing this as a favor to somebody? A. Yes.

Q. At this time, you had met Mr. Giglio approximately six or seven times, would that be a fair statement? A. Approximately, yes.

Q. Would it be fair to say that prior to your conversation with him on June 22nd, 1966, you had never said more than hello and goodby to him?

The Court: That has been asked and answered several times, Mr. Lazarus.

(142)

Put another question.

Q. Did you take out any other records on June 24th other than the signature card? A. No.

Q. Did you take out more than one card? A. No.

Q. Did you look over several cards to see which one you were going to take? A. No. I knew that the name Cohen was a common name and I picked out the name Cohen.

Q. Where were these cards kept in relation to where you were working, that is where you actually transacted your business—where are the cards located? A. Back with the secretaries and some other officials.

Q. Ordinarily, during the course of your working day, would you have occasion to go back there that frequently? A. Yes.

Q. For what purposes? A. To check balances, how much a person had on account in the bank, checking signatures.

Q. Do you recall approximately when on that night you took that card? A. No, probably in the afternoon.

(143)

Q. Would you please think back and see if you can tell us when you stuck your hand in that file and took George Cohen's card out? A. I couldn't give you any definite time.

Q. This is something you gave some thought to before you removed this card? A. Yes, and I went and took it out.

Q. This is something you thought about? A. Yes.

Q. Did you think about when you were doing it and when would be the best time to take that card out? A. No.

Testimony of Robert Edward Taliento

Q. Did you consider that there might be some time when it was crowded where these cards were located? A. No.

Q. Did you stick this card in your pocket when you took it out of the file? A. Yes, I took it out and looked at it and put it in my jacket.

Q. Was anybody around when you put it in your pocket? A. I don't recall. There could have been someone sitting at
(144)
the desk.

Q. Would you take a record from the bank and stick it in your pocket when someone is around? A. Sometimes you would, if you were going on the other side you just put it in your pocket or something.

Q. When was the next occasion you say you saw the defendant?

The Court: Ladies and Gentlemen, we will take our noon recess at this time. Do not converse or otherwise communicate amongst yourselves or anybody else or touch upon the subject of the merits of this case that is now on trial. Do not express any opinion until it is finally submitted to you for a verdict.

We will recess until 2:15.

(A recess was taken at this time.)

(145)

AFTERNOON SESSION

The Court: Bring the jury in.

I think somehow we got the back line mixed up.

Testimony of Robert Edward Taliento

Is it stipulated that the jurors are all present in their proper places?

Mr. Lazarus: Yes.

Mr. Golden: Yes, your Honor.

ROBERT EDWARD TALIENTO, having been previously duly sworn, resumed the stand and testified further as follows:

Cross-Examination by Mr. Lazarus (Continuing):

By Mr. Lazarus:

Q. Mr. Taliento, to bring us back to where we were before the recess, you say up until the time and prior to the third meeting, the time you say you took the signature card from the bank, you never knew there was anything wrong with any of these money orders and you had no arrangements for any compensation, is that correct? A. That is correct.

Q. You say that signature card was taken from the bank on a Friday? A. Yes.

(146)

Q. Would that be June 24th? A. The 24th, if it is a Friday.

Q. That was after you had had two meetings about these checks with the defendant, is that correct? A. That is correct.

Q. Do you recall testifying in this case on direct examination that you had given this signature card to the defendant before the third meeting?

Mr. Golden: Would counsel indicate the page?

Mr. Lazarus: Page 10.

A. That would be at the third meeting.

Q. You said, at that time, that you had previously given this signature card to the defendant before the third meeting? A. No, I said I gave it to him at the third meeting, Friday or Saturday.

Mr. Lazarus: May I direct this be marked for identification, the page I was referring to.

I want to mark it for identification.

The Clerk: The said page marked as Defendant's Exhibit D for identification.

Q. Mr. Taliento, I direct your attention to Defendant's Exhibit D for identification and refer you to line 24 and also (147)
to page 11, line 2. A. Yes.

Q. Do you recall saying on direct examination that you had given the signature card to the defendant before the third meeting? A. What I meant by the third meeting was the next time I met him after the Friday.

Q. When you say you had previously given it him, would that be incorrect? A. That is what I meant by it, that Friday or Saturday.

Q. You were asked, did you have a third meeting with the defendant, John Giglio, is that correct? A. Yes.

Q. And you were asked, had you previously given him this signature card, referring to this third meeting, do you recall being asked that? A. Yes.

Q. Do you recall what your answer to that is? A. Yes.

Q. You had given him the signature card you testified before the third meeting? A. That would be the third meeting.
(148)

Q. Do you remember being asked that? You had previously given him this signature card? A. Yes.

Q. And do you remember your answer to that? A. Yes.

Mr. Golden: I would request the following questions and answers be asked since he is taking the question out of context. It creates a wrong impression of the question.

The Court: You will be able to bring it out, Mr. Golden.

Keep it in context. He was handed an envelope with some checks in it and there was some testimony about that at the third meeting.

Mr. Lazarus: I think it is clear when he handed it.

The Court: Previously he had been handed an envelope with some checks in it.

Mr. Lazarus: All right.

Q. Now, you testified this morning before the recess that up to the time of this third meeting you had no arrangement or deal in connection with the checks? A. Nothing specific, no.

(149)

Q. You had no arrangement for compensation at all?

The Court: I am going to ask you to keep your voice up. You answer a couple of questions fine and then you drop your voice. Keep your voice up.

Q. Is that correct?

The Witness: Can you repeat the question?

(Whereupon, the last question was read by the reporter.)

A. No.

Q. Prior to your third meeting, the time you took the card from the bank, at that time, you had no arrangement, you were doing it as sort of a favor or accommodation? A. Right.

Q. You recall July 7th, when you spoke with the FBI, don't you? A. Yes.

Q. Do you recall signing a statement on that day? A. Yes.

Q. Did you, sir, on that day that you spoke to the FBI, (150)
tell them that you had a deal which was made on your first meeting with this defendant where you were supposed to get 25 percent of the proceeds of any checks you cashed? A. That I don't recall, no.

Q. If you said it then, was it the truth?

Mr. Golden: Objection, your Honor.

The Court: The objection is overruled.

A. That, I don't recall.

Q. If you said that, that at the first meeting that you had with the defendant that you had an arrangement whereby you were to get 25 percent, would that have been a true statement? A. At that time, it would have been true, but I don't recall.

Q. It would have been true? A. That was two years ago.

Q. It is not true today? A. No, I remember exactly now what happened.

Q. On July 7th, 1966, your memory was not too clear about the events of late June or early July 1966, is that correct?

Mr. Golden: I object to this.

The Court: The objection is sustained.

(151)

Q. Is your memory better now than it was when you were questioned by the FBI as to these incidents? A. Yes.

Q. It is? A. Yes.

Q. Was your memory faded four or five days after these alleged incidents? A. I was all confused about everything.

Q. I show you this exhibit, Defendant's Exhibit C for identification, and I direct your attention to page 4.

Do you see some initials here on one line, six lines down? A. Yes.

Q. Are those your initials? A. Yes.

Q. Would you please read the sentence that contains your initials, starting there? A. I assume that $750 would be returned to me by Giglio since he had told me on our first meeting that I would get about 25 percent of the proceeds in cashing these money orders.

Q. Did you make that statement on July 7, 1966? A. Yes.

(152)

I initialed it.

Q. Which is correct, that statement or your statement today that you had this deal or arrangement as of the time you took that signature card from the bank? A. What I say today.

Q. So you were lying when you— A. I was confused.

Q. Did you read this statement before you signed it on that day? A. Yes.

Q. Did you initial each page? A. I don't know if I initialed each page, I know I initialed some parts.

Testimony of Robert Edward Taliento

Q. Did you put your initials above the line and words, "On our first meeting," are those your initials? A. Yes.

Q. Do you remember telling the security officers in the bank on July 5th that on your first meeting with Julio, you were to get paid out of the proceeds of the checks that were to be cashed? A. I told them I received—

Q. Just answer the question. I didn't ask you that.

(153)

Do you remember telling the bank officials on July 5, 1966, that Julio told you he had some stolen Traveler's checks and that he would pay you money from the proceeds of the checks for cashing them? A. Yes, I remember saying that.

Q. You did say that? That is two occasions where you said that you had an arrangement from the very beginning? A. According to that, yes.

Q. When you took that signature card out, what exactly did you have in mind?

Mr. Golden: Objection, your Honor.

The Court: The objection will be overruled.

A. Whosever name is one—

Q. What did you have in mind as far as— A. To put a name on the check.

Q. Why were you going through this whole procedure? A. To put a name onto the checks.

(154)

Q. You testified previously that you are not in the habit of taking signature cards out of the bank? A. Yes.

Q. You were doing something you knew was improper? A. Yes.

Q. You are risking your job at that time? A. I wouldn't call it risking my job.

Q. Would it be fair to say that if the bank knew you were taking a signature card out at that time that you would be fired? A. That, I wouldn't know.

Q. Had you ever been told you were not supposed to remove records from the bank? A. No.

Q. Did you know in your own mind that when you took records out of the bank that it was improper? A. I thought I wasn't supposed to do it, but not that it was anything that serious.

Q. Why were you being so nice to Mr. Giglio at that time? A. I was doing a favor.

Q. Did he ask you to do him a favor? A. Not exactly. (155)

Q. Did he say something in words or substance, do me a favor, get me a signature card, or words to that effect? A No.

Q. I direct your attention to Defendant's Exhibit A, page 35, line 18, do you recall being asked—

Mr. Golden: Would you describe what Defendant's Exhibit A is?

Mr. Lazarus: The Grand Jury minutes.

Mr. Golden: What page?

Mr. Lazarus: Page 35, line 18.

Q. Do you recall being asked this question by a juror—

The Court: You will refresh his recollection by showing him the document, not reading the question.

Q. I refer you to line 18, do you remember that question being asked of you and you making that answer? A. Yes.

Q. So that he did ask you to do him a favor, is that correct? A. Not directly do me a favor, but that is how I understood it to be.

(156)

Q. You just said, "Sure" when that request was made? A. Yes.

Q. Now, at this meeting when you had the signature card, that was July 24th, is that correct? A. Either the 24th or 25th.

Q. Either a Friday or a Saturday night? A. Yes.

Q. That is when you gave it to him, is that right? A. Correct.

Q. Were you wrong yesterday when you said you gave it to him on the 22nd or 23rd of June on direct examination? A. Yesterday?

Q. Do you recall testifying yesterday in this court? A. No.

Q. You do not? A. No.

The Court: Not yesterday, Friday.

Q. Excuse me, Mr. Taliento, I am sorry.

Do you recall testifying on Friday, on direct examination, and saying that you gave him the signature card about the

(157)

22nd or 23rd of June? A. No, not Friday.

Q. Do you recall testifying this past Friday? A. Yes.

Q. And saying at that time when you were questioned by Mr. Golden that you had given a signature card to Giglio on June 22nd or 23rd? A. No, saying that Friday or the week-end.

Testimony of Robert Edward Taliento

Q. Well, I direct your attention to Exhibit D for identification, to page 11, lines 6 and 7, and ask you if you will look at that, sir, and I ask you if that refreshes your recollection?

Mr. Golden: I object unless the witness is permitted to read page 10 as well. I think the rules permit an objection if the witness is directed to testimony and there is other testimony in context or close to the testimony to which counsel is cross-examining—

The Court: Read pages 10 and 11 to yourself.

Put your question, Mr. Lazarus.

Q. I ask you whether you recall testifying on direct examination that you gave the signature card to the defendant on the 22nd or the 23rd of June? A. Yes, that is what it says. (158)

Or whatever the date was during the week, I don't remember the exact date.

Q. That is wrong if you said the 22nd or 23rd of June?

Mr. Golden: Objection. I think a fair reading of page 10 and page 11 shows that this is not a prior inconsistency—

The Court: The objection is sustained.

Q. What date was it that you gave him the signature card? A. That weekend before the 27th.

Q. What day was that? A. Like I said, Friday or Saturday.

Q. What day, what number day? A. I don't know the date.

Q. You said before that Friday was the 24th? A. Yes.

Q. Saturday would be the 25th? A. Yes.

Q. So if you said you gave it to him on the 22nd or 23rd, that would be incorrect? A. Correct.

Q. If you said he returned it to you on the 25th—withdrawn.

(159)

You had a conversation that night, the 25th or 26th, the night you gave him the signature card? A. Yes.

Q. You had a conversation? A. Yes.

Q. What was that conversation about?

Mr. Golden: Objection, your Honor. I think this is repetitious. I think it was asked and answered, and he testified several times to this before lunch.

The Court: It is, however, cross-examination, but I am not going to allow you that much latitude. You have gone over conversations and dates three or four times. I would limit you to going over the matters on cross-examination to determine the truth of the matter but not to go over the matter again and again.

The objection is overruled.

A. Like I said, I handed him the signature card and we would meet the next night or Sunday night—during the weekend.

Q. At that time, had anything been said about you getting paid? A. It would have to be that night or the night after

(160)

that. He just said it would be worth my while.

Q. Up to that point, it had never been discussed? A. No.

Q. What was the next meeting? A. Sunday night, the 26th.

Q. Where did that meeting take place? A. On Avenue U and West 9th Street.

Q. What happened? A. He handed me back the signature card in an envelope.

Q. Was it at that time that you had the conversation about it being worth your while? A. Either that night or the night before—the meeting before.

Q. Were any percentages discussed? A. No percentages.

Q. Your statement of July 7th, that percentages were discussed on your first meeting, that was incorrect?

Mr. Golden: Objection, your Honor. That was asked and answered.

The Court: The objection will be sustained.

(161)

Q. Did get any money that night? A. No.

Q. When was the next time you say you saw the defendant? A. After what meeting would that be?

Q. You are testifying, sir, you tell me.

The Court: Mr. Lazarus, we haven't tied down the meeting yet.

Mr. Lazarus: He said a Saturday or a Sunday night.

The Witness: Monday night.

Q. You had gone to work that day? A. Yes.

Q. Where did you meet the defendant this time? A. The same vicinity like I said before.

Q. When you say the same vicinity, can you be more specific where you were when you had the meeting on this particular night?

Mr. Golden: Objection, your Honor.

The Court: Avenue U and 9th Street, for the last two days we haven't gotten off that corner.

Mr. Lazarus: I respectfully request the court to di-

(162)

rect the witness to try to answer more specifically.

The Court: He said he cannot be more specific. You are trying to go down to one square in the sidewalk. He said in the vicinity of Avenue U and 9th Street.

Q. What time was it? A. The evening time, 8 or 9 o'clock.

Q. Where did you come from? A. Work.

Q. Directly from work? A. I would go home first.

Q. Did you have an appointment to meet him that night? A. Yes, I was supposed to meet him the next night, at 8 or 9 o'clock.

Q. Were you alone when you met him? A. Yes.

Q. What happened at that time?

Mr. Golden: Objection, your Honor.

The Court: The objection will be overruled.

A. I handed him the envelope with the money and he handed me back $500.

(163)

Q. Prior to that time, you say you had no direct arrangement with the defendant? A. Correct.

Q. You have some particular type of stamp that you use in the bank that goes on each check that you cash? A. Yes.

Q. Was that stamp or identification put on these checks that you are testifying about now? A. No, I don't believe so.

Q. Would you like to look at it and tell me if it was placed on there? A. This is part of the stamp (indicating).

Testimony of Robert Edward Taliento

Q. Did you put your stamp or identification, one that particularly identifies you, on these checks? A. This one, you can't make it out.

The Court: What exhibit is that, Mr. Taliento?

The Witness: 3.

(164)

Q. Do you see it on any of the others? A. (No response).

Q. Is that your stamp or identification? A. That is part of the stamp or identification.

Q. Is there some particular letter, number, or symbol that identifies checks that you cash at your window? A. Yes.

Q. What is that? A. It is a stamp, it says teller number, whatever it would be.

Q. To your knowledge, did you put that stamp on the money orders that you say Giglio gave you? A. On the one batch there there is a couple that would be part of the stamp that is showing.

Q. That is part of your stamp that is showing? A. Yes, it is.

Q. How about the other two batches? A. No, I don't see mine on the others.

Q. What, if anything else, happened at this meeting you are now testifying about, after you got the $500?

Mr. Golden: Please specify which one.

The Court: The one at which he got the $500, he did tie it down.

(165)

The object is overruled.

A. I received another envelope with checks in it and I met him the next night.

Q. How much did you get that time? A. The same amount.

Q. You met him the same place? A. Yes.

Q. When was the next time you met the defendant? A. It would be about five or six days later.

Q. Would that be July 5th? A. No, July 4th.

Q. July 4th? A. Yes.

Q. Where did that meeting take place? A. The same area.

Q. What time? A. (No response).

Q. The day or night? A. At night time, around 8 or 9 o'clock.

Q. July 4th was a holiday, you weren't working? A. No.

Q. Are you sure about meeting at night? A. I came home

(166)

from Long Island in the afternoon.

Q. You remember being on Long Island on July 4th? A. Yes.

Q. What took place at that meeting? A. He asked me if I would cash some more checks and I said if he wanted to have them cashed that he should come to the bank.

Q. On July 5th, approximately what time were you first questioned or when did you know you were in trouble? A. Late afternoon, around 3.

Q. Tell me what happened? Tell the jury how you first got an indication there was trouble? A. One of my officials asked me—they told me some checks came back on me and that there was something wrong with it.

Testimony of Robert Edward Taliento

Q. Did you start to sweat a little at that time? A. No. I got a little nervous, I didn't know what it was all about.

Q. You say you didn't know what it was all about? A. No. (167)

Q. You had a pretty good idea what it was all about, didn't you? A. Yes.

Q. Who was the first person that spoke to you about this? A. One of the employees at the bank, I don't know which one.

Q. What did he ask you, if you remember?

Mr. Golden: Objection, your Honor.

The Court: Overruled.

A. I don't recall what he asked me specifically. He told me there was something wrong with the checks and I went back to work.

Q. What time was this? A. In the afternoon.

Q. Were you told not to leave the bank? A. No. I still had plenty of work to do.

Q. Was the bank closed at that time? A. No, it closes at 3.

Q. When did somebody speak to you again? A. I believe it was about 3:30 or 4 o'clock, something like that.

Q. Didn't they lock that bank up that day and keep all the employees there? A. After 3 they always lock the bank. (168)

Q. Did they keep all the employees there that night, July 5th? A. I don't recall.

Q. Were you told not to leave? A. No, I was talking to the security and I don't recall them telling me don't leave.

Q. When for the first time did you tell anyone about this whole scheme at that bank, at what time? A. I guess it would be early evening, 6 o'clock or 7 o'clock.

Q. Were you nervous at the time? A. Then I was.

Q. How about before that? A. I wasn't nervous until I saw the checks came back.

Q. You said you knew the checks came back when they first spoke to you? A. Yes, they asked me—or they showed me the checks came back.

Q. What time was that? A. Before 3, approximately between 2 and 3.

Q. At that time, you knew these checks had come back? A. Yes.

(169)

Q. Were you, at that point, worried or nervous? A. When they came back I was.

Q. Did you have an appointment to meet the defendant that night? A. No, not a definite appointment, just that I would see him later. I knew that day would be an extra busy day.

Q. You say he came to the bank that day? A. Right.

Q. When did you call the defendant up that night, what time? A. Oh, approximately 11 o'clock.

Q. 11 o'clock at night? A. Yes.

Q. Did you ever call him at 11 o'clock at night before? A. No.

Q. Who suggested you call him or did anybody— A. The FBI agent.

Q. Had you already made a statement to the FBI agents? A. (No response).

(170)

Q. Telling them about this whole thing? A. They had the bank statement.

Q. Is that the statement of July 5th, Defendant's Exhibit D? A. Yes, I believe that is the one.

Q. Who was the one, if you recall, that suggested you make a telephone call? A. One of the agents.

Q. At this time, had you had any conversation with these agents or anybody else about helping yourself? A. No. They just told me to make the phone call.

Q. Prior to that, was there any conversation of any type about you cooperating or giving a statement to them so that you can help yourself so that things might be easier for you? A. I don't recall.

Q. Was this call made on an extension phone, if you know? A. There are about four or five phones in there.

Q. Were the FBI agents listening to the phone when you called the defendant? A. They were sitting right next to me.

Q. Was anybody on an extension, on the same line you were on? A. That, I wouldn't know.

(171)

Q. Could you see if anyone was on another telephone? A. No.

Q. When you talked to the defendant, at this time, what did you say to him? A. That I would see him later, that I was busy at work.

Q. What did he say to you? A. "Sure," I guess, or something to that effect, that it was all right.

Q. Was that the entire conversation that you had on the telephone that night? A. Yes.

Q. Before you went to meet the defendant that night, did you get some instructions from somebody as to what you were supposed to do or not supposed to do? A. What do you mean by instructions?

Q. Explain what instructions means? A. Explain what you mean.

Q. All right, Mr. Taliento, I'll try to do that for you.

(172)

Were you told by anybody, either the FBI agents or the bank officials, what they would like you to do when you met Mr. Giglio that night? A. (No response).

Q. Do you understand that? A. Yes. Just to walk with him and that was it.

Q. Were you told to engage him in conversation? A. No.

Q. Had you ever spoken to him on the phone before that night? A. To who?

Q. Did you hear my question? A. Yes.

Mr. Golden: I object to counsel raising his voice.

The Court: The objection is sustained.

Mr. Lazarus: That, Judge, is crystal clear and I would like an answer.

Q. Did you ever speak to Giglio on the phone before that night? A. No.

Q. What part of that question didn't you understand, sir?

(173)

The Court: Just a minute, Mr. Lazarus. Ask questions, and ask questions that have to do with this case.

Mr. Lazarus: I think it is quite relevant.

The Court: It is not. Put a question.

Q. What is your answer, did you ever speak to him before?

Mr. Golden: I object, that has been asked and answered.

The Court: He said, no, Mr. Lazarus. The objection will be sustained.

Testimony of Robert Edward Taliento

Q. Did the defendant sound surprised when you called him up, in your opinion? A. No.

Q. Where did you call him? A. From work to the—

Q. Did you pick up the telephone yourself?

The Court: Mr. Larzarus, I think you will both get along better if you let him complete the answers. He was trying to answer.

Where did you call?

The Witness: From the bank to the bar on the corner, Jay's Lounge.

(174)

Q. Had the defendant told you he was going to be in Jay's Lounge at that time? A. No.

Q. Did you know that sometimes he was in that place? A. Yes.

Q. Did you call on a guess that he might be there? A. Yes.

Q. Who did you ask for when you called? A. I believe I said Junior.

Q. What did you tell him at that time? A. I had been working late and I will see him later on.

Q. When you met him later on—what time was it when you met him? A. I believe close to 12.

Q. Close to midnight? A. Yes.

Q. Did the defendant act suspicious when you met him at that time? A. I don't believe so, no.

Q. What did he say to you when you met him at that

(175)

time, do you recall? A. "How was work? Did you have a hard day?"

That was the substance of the conversation.

Q. Had you ever met this defendant at any time at midnight? A. No, I don't believe so, no.

Q. The time he asked you,—you say he asked you, "Did you have a hard day?" You say he asked you that? A. Yes.

Q. Did you have a conversation with him about checks or anything of that nature? A. No.

Q. Did you have any type of recording device on at that time? A. No.

Q. A miniphone? A. I didn't.

Q. Do you know what a miniphone is? A. Yes, but I didn't have one.

Q. That night, at midnight, the defendant said to you, "Did you have a hard day?" A. Correct.

Q. What did you tell him? A. "Yes, it was a hard day

(176)

work."

Q. Did he say that he had more checks at that time? A. No.

Q. How far away was the FBI, to your knowledge, how far away was the closest agent? A. I believe 15 feet, maybe.

Q. There was no conversation then about checks or money or anything of that nature? A. No.

Mr. Lazarus: I have no further questions.

The Court: Mr. Golden?

Mr. Golden: I have no questions, your Honor.

The Court: Step down.

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Prosecutor's Summation

(R 235)

Mr. Golden: May it please the Court, Mr. Lazarus, Ladies and Gentlemen: I want to thank you for your attentiveness in what has been a short trial. I observed you have followed the testimony in this case with some care.

The last time I spoke to you directly I made certain commitments. And I address you now, confident that I met those commitments in the course of this trial.

I told you this wasn't a complicated case, I told you what I was going to prove and how I was going to prove it. The events of this trial covered a relatively short period of time, two weeks, possibly ten days, if you judge that time from the 26th of June through July 5th.

I submit that the testimony was clear and convincing and I submit to you that this evidence was not only testified to on the stand but substantiated by other events and other

(R 236)

factors in this case which I wish to elaborate upon.

Who testified in this case? Mr. Adams, the assistant manager of the Manufacturers Hanover Trust Company; Mr. Cohen, Robert Taliento, Mr. Volpe, and Mr. Axten. There were five witnesses.

Let us just examine briefly what these witnesses testified to. Before we consider Mr. Taliento's testimony, the implications and possible inferences that may be drawn from that testimony, and I tell you now, Ladies and Gentlemen, I have a job to perform here and I advise you that I have been doing it with confidence to meet my burden, and if you have a recollection of the events of this trial that differs from mine, reject my version, if you do not wish to accept

my inferences which are largely inferrable from the events here.

I do feel a duty, an obligation as the trier of the facts, to point out to you in your mature wisdom, in the exercise of your own common sense, factors in this case which stare out—they are glaring—but let us first address ourselves to (R 237)
the testimony.

Mr. Axten—I mean Mr. Adams told us there were five tellers employed in the bank during this time and they cashed checks, and at the end of the day they entered the cashed checks on work sheets, added them up and forwarded them for collection.

There was Exhibit 1, 23 checks, and he identified them from the markings on the back which bear the imprint, Manufacturers Hanover Trust Company, and I show them to you, Ladies and Gentlemen, and you may examine them later on in your discretion and at your leisure. That is, if you feel it necessary that you should examine such documents.

They are checks drawn on the Crocker-Citizens National Bank in Los Angeles, California, to the order of George Cohen—and there is no question of that in this case—they went into the Brooklyn Bank and were forwarded to the California Bank, but let me not digress because the balance of the sheets were identified. The work sheets were received in evidence and they are here for you to examine and you may observe the reverse sides. Examine the $100 (R 238)
entries and you will recall that Mr. Adams' testimony was that he checked the other tellers in the Bank and they

traced these Traveler's Express money orders to one teller and he was identified but I won't go through it, but they are here, they are all here. They are exhibits in evidence.

The checks were cashed on the 27th and 28th, and the checks which were brought to the bank by the defendant Giglio on July 5th.

Mr. Cohen's testimony was very brief, he didn't go too far with it. He looked at the checks and told you it was not his signature. He was previously identified as the only George Cohen with an account at that bank.

Then came Taliento. He told the story that I said he would tell in my opening, and I further submit that in spite of grueling cross-examination I don't think the man substantially varied that story from the story he told on July 5th when his employers interrogated him and from the story on July 7th when the FBI interrogated him and from the story he told in the grand jury.

(R 239)

You will recall at the very inception of this trial that Judge Real advised you to draw distinctions between innocent error or deliberate and intentional falsehood, and we will get to those later. [Innocent error—that counsel has taken and attempted to blow up beyond what reason would call for—appeals to passion and prejudice, and taking a young man who took the stand knowing he still could be indicted, and certainly very nervous, told a story.] He met the defendant sometime around Christmas of 1965, and Ladies and Gentlemen, at this point, I want to ask you to exercise your own knowledge of people, young people, nineteen years old, a 19-year-old boy. A 19-year-old boy and a 26 or 27-year-old man. We heard Axten testify that this defendant identified himself as having been born in 1939.

We know Taliento was nineteen, he worked in a bank and he did pretty well. He got out of school and in a period of months rose from clerk to teller. He is a Brooklyn boy on the streets. Whom do boys of nineteen look up to? Do they
(R 240)
look up to middle-aged people, in their late forties or fifties, or does a Brooklyn boy look up to the guy in the street? The guy on the corner who is seven years older, who has the keys to a Cadillac in his pocket. Would he like to get into the good graces of this kind of a fellow? Is it difficult to understand from your own experience? Is it necessarily true, are we so that we cannot believe a 19-year-old? I don't think you are going to accept that.

Let's get back to Robert Taliento's story. So he met and knew Giglio, he didn't know him well because where does a 19-year-old who has a job in a bank come to associate with this defendant with a Cadillac, who is in the bar on the corner while he is standing with the youngsters on the street. We have been around, we know what Brooklyn is. Brooklyn is a place where kids grow up on the street.

Mr. Lazarus: I object. I don't think this is proper argument.

The Court: It is proper argument, and the objection is overruled.

(R 241)

Mr. Golden: Ladies and Gentlemen of the Jury, the kids in Brooklyn use the streets as a playground. Perhaps that is the only playground available to them. You know this city and you know the youngsters, and I say, on West 9th Street and Avenue U, and you know this fellow Junior who hangs around and you know counsel has made much of Julio, and for a while I was puzzled, and then I remembered

when I went to elementary school I learned synonyms and antonyms and homonyms. What are homonyms? They are words that are spelled differently that sound the same and mean something different. A good example is the word bare spelled b-a-r-e and the word bear spelled b-e-a-r. These words are spelled differently, have different meanings but sound the same.

Ladies and Gentlemen, when Judge Real referred to the defendant in reading the indictment he called him Giglio, but you know when the witness Taliento testified, when counsel for the defendant or when I referred to the defendant we called him Jilio (phonetic), and so, perhaps, I (R 242)
say this is a fair inference from what we have of the homonyms.

There he was, caught red-handed on July 5th, Mr. Taliento was, and he didn't tell the story right away, but he told it to his employers. And what did he tell them? "I met him as Julio or Junior." That is what he told them and maybe their untuned ears heard Julio and Junior. He didn't know the man's last name. And there he is, a 19-year-old boy in trouble.

There is no showing here there was substantial variation in the testimony as to the real facts. There was the man passing the blank checks, falsely made out checks to the name of George Cohen, and there is no substantial variance on that. There is a name Julio, and I went into the logical inference of this Julio business.

On cross-examination a suggestion was made that his employers were seeking to implicate—to have him implicate somebody else. Ladies and Gentlemen, those security guards at the bank, they are not in the business of law (R 243)

enforcement, per se. Why would they want to implicate somebody? They wanted to get the money back, that's all. They wouldn't be interested in implicating anybody else. They would have been delighted if Robert Taliento would have told them that he did it and the money was downstairs in the vault. And if he told them that he would turn the money over to them. I think that it more reasonable than attempting to spend time in trying to get him to implicate somebody else.

He said that the defendant approached him and asked him if he would cash some checks. He knew who he was dealing with; we can read between the lines. Perhaps he was flattered that a 26-year old, an important fellow who hung around on West 9th Street and Avenue U was approaching him. But he knew, and I think we can infer, that the defendent knew if he wanted to cash a money order that all the banks were open. I don't have to approach anybody and ask a special favor to cash a money order, and Robert Taliento was no dope when he said, "I want to look (R 244)
at these money orders." And so, there was a meeting several days later and the money orders were exhibited. He looked at them and I don't know, they were blank, but people could have blank money orders. But still, this defendant, we may infer, apparently wanted Taliento to cash them. How could he unless he was a depositor in his bank and he sold them? And at that time, he got him a signature card from the bank.

Do I condone this action? I don't, not in the least. Taliento knew right from wrong, he knew it, but he was interested in getting in favor with this fellow on the corner and so he got him the card. And on the 25th or

26th, over the weekend, when that card was returned together with these money orders, Exhibit 1, he saw them and he saw how they were drawn. He knew George Cohen was the name on his card and I don't think on Brooklyn Streets you bother getting into discussions or ask what, why and where, but he knew what was expected of him and at that point he was told "I will take care of you." He
(R 245)
didn't have to hear any more from the big man on the corner, this was his hero, this is the fellow he looked up to, so he went and did what was expected of him and he got his fee for these services. He was taken care of—$500. And his testimony was that $500 was paid to him in large bills.

I just want to read that to you because I think it is most significant.

"Q. Would you tell us what happened . . ."

Mr. Lazarus: What page, sir?

Mr. Golden: 85.

> "Q. Would you tell us what happened at the meeting? A. Well, I handed the defendant an envelope containing the money and in turn I received $500 in large bills."

Let's move ahead to July 5th. What did Agent Axten find in the right-hand pocket in a rubber band in the defendant's pants? Bills. Would they be large bills to a young man of nineteen, $100 bills, $50 bills? What kind of man carries $100 bills or $50 bills?
(R 246)

Mr. Lazarus: I object to this. It is not in line with the testimony.

The Court: The objection is overruled.

Ladies and Gentlemen, again I will instruct you that the arguments and statements of counsel are not evidence in the case. You heard the evidence from the witnesses and that is the evidence you are to consider. This is only the opinion of Mr. Golden and at the time Mr. Lazarus argued it was his opinion of what the evidence showed.

Mr. Golden: Ladies and Gentlemen, I repeat, if you, in exercising your reason and common sense see fit to reject the inferences I am suggesting in the course of this summation, please feel free to do so. I certainly am interested that justice be done and seeing that you discharge your duties as you should in your search for the truth.

I am just trying to elicit as a lawyer, who perhaps is more skilled in inferring these possibilities and possible inferences that may be drawn. I trust I do it fairly and honestly. If you feel to the contrary, please do not accept

(247)

what I have said here.

And so, we have the events of the 27th, the payoff, the delivery of another batch of checks for the 28th. And we have a payoff on the 28th. Then we get to July 4th. Robert Taliento said, "No, you will have to come to the bank."

And here, let's get to another straw man, the question of fee. You know, a lot of us remember events immediately after because later on we are given hindsight and we vary that version when we know differently. Not because we are lying, and not because we want to lie, but—I want to demonstrate something to you here, where I think it may be fairly inferred from the evidence.

It is Taliento's testimony that the defendant Giglio told him, "You take care of me and I will take care of you later." And he knew of no fixed percentage. We find that on the first meeting when $2300 was cashed all Robert Taliento got was $500. If we like to be mathematicians, as Mr. Lazarus suggests, we can divided 2300 by 25 per cent
(248)
and we come up with a figure in excess of $500. I think that corroborates Taliento's story.

Let's move ahead to July 5th. The questions as stated, the important factors of this occurrence was that money passed hands. He told a story that somebody else wrote it down and he accepted 25 per cent. Was it willful error, was it made to deceive anybody? I submit it falls squarely into the category of innocent error and not intentional falsehood which Judge Real described.

Let's get to the next straw man. The statements that he was confronted with—the statement that said the checks were stolen, the money orders were stolen—the statement said it. He didn't know it.

Let me ask you this: A 19-year-old boy on the afternoon of July 5th in the bank shown checks that say in big bold print "Stolen." May we reasonably infer without this occurrence he knew that something wasn't kosher with these checks? As a mature member of the world, we know that much, that when he saw this, what did he infer? As the (249)
truth as to whether or not this was stolen—but there is a stamp on there. He saw it in black and white and he had the eyesight of writing a statement, it didn't look untrue to him that these were stolen at that time at this point. Is that innocent error?

Then we have the final occurrence at the bank and there was no payoff, and we have this disparity. The second time it was $2,000 and he got $500. Well, what was he looking forward to Monday night after the defendant Giglio left the bank? He made some quick calculations in his teller's mind and he expected and perhaps we might better say he hoped what he was going to get. He had no real solid deal, he was doing something with the hopes that defendant Giglio would keep his promise to take care of him.

And here we come further, and I submit something that corroborates the story. Sometime, nine or nine-thirty, he is at the bank and the FBI show up, and I just want to clear up this business of instructions or non-instructions that oc-

(250)
curred at the very end of this young man's testimony after hours of cross-examination which I shan't characterize, because you saw it and you are the best judges of what that was.

I think he was a little cautious, as he might well be. I think he was a foolish boy and I think he demonstrated that by his testimony. Not that he was a stupid boy, because he thinks the answers to the questions were responsive, and what were his responses? For the record, Ladies and Gentlemen, let me read it to you:

"Q. Who suggested you call him or did anybody?"—

Mr. Lazarus: What page?

Mr. Golden: A114.

And continuing:

"A. The FBI agent."

"Q. Who was the one that you recall suggested you make a telephone call? A. The agents."

Then comes a series of questions and he is asked: "Before
(251)
you went to meet the defendant that night did you get some instructions from somebody as to what you were supposed to do or not supposed to do"—it is a pretty long question—and then there is the answer:

"A. What do you mean by instructions?"

You heard what he went through with that. Was this an unreasonable or uncalled for response after so many hours of cross-examination?

And then he says, "A. Explain what you mean.

"Q. All right, Mr. Taliento, I will try and do that for you. Were you told by anybody, the FBI agent or the bank officials, what they would like you to do when you met Mr. Giglio that night? A. (No response.)

"Q. Do you understand that? A. I didn't. Just to walk with him, that was it."

That was it. I am sorry to take up so much of your time, but I think that it is important that these straw men be (R 252)
destroyed because I am not at all pleased with the characterization of this witness as a filthy and soiled liar. Whether or not he did lie is your function to determine, Ladies

and Gentlemen. I have confidence that in the appraisal of the witness to be given to his testimony and the credibility of that testimony will be decided by you in your good time and pursuant to your oath, and I am confident of what the result will be.

I will just deal briefly with the balance of the testimony. It certainly wasn't long. Mr. Volpe took the stand and told you what his job was. He told you that he fed the information to the computer and information came out, and under his supervision the stamp "Stolen" was put on. They were fictitious, all of them, and you may examine all of them in the jury room, Ladies and Gentlemen.

Mr. Axten took the stand and he said he got to the bank after nine and he spoke with officials at the bank. He said he spoke with Taliento, and he placed a call to Jay's Lounge. (R 253)

I submit that the call was made to Jay's Lounge. Where is it? West 9th Street and Avenue U. Isn't it a coincidence that a young man on July 5th, when caught in the act redhanded, could make up such a story that would gibe, that he met a man on West 9th Street and Avenue U, and say that he has to meet him again tonight? We may infer that from the evidence. He makes a call and he asks for Junior and then we heard that Agent Axten heard him say that we are busy at work and I might be an hour late. Whether it was eleven or eleven-thirty or twelve, it doesn't really matter. He met him, and he was there. Axten saw them there, and there were other special agents of the FBI

there and there were detectives of the City Police there. Counsel did not challenge that Giglio was there, and he walked out to meet him across the street.

Giglio detached himself from a group of five or six in front of the bar. This is Brooklyn, it is a bar, and it is not unusual for people to hang out in bars or stand outside. (R 254)
of a bar or hang around a candy store; this is where the socializing goes on in Brooklyn streets.

He walked for some distance until he reached the point where Axten came up and in the exercise of his discretion as a law enforcement officer and an experienced one, arrested Giglio. When he arrested him, what did he find? First of all, we know this much, Giglio said to him that the $500 wasn't his. I buy that, it was Taliento's. We know that. We know something else, he didn't find any identification on the person of this defendant, such as a Blue Cross card, a draft card, or any identification. He found keys to a Cadillac.

Ladies and Gentlemen, I don't think we have to go too far here. I don't believe that you can accept the proposition that Robert Taliento, a man of nineteen years old was a man of the world or underworld, if you please, or any modern-day Machiavelli to entrap an innocent man. Taliento was even challenged as to what he did from the time (R 255)
he lost the job until the time he became a plumber's assistant. For one thing, that cross-examination demonstrated that he didn't have $7,300 in his pocket during that time. He went to work at the Big Apple and installing linoleum and working on a moving van.

No, Ladies and Gentlemen, I submit to you that this is not the kind of a situation that counsel for the defendant submits it is.

The evidence simply does not support his version of this occurrence. It wasn't entrapment or ensnarement of any kind.

I suggest that the evidence fairly points to the fact that this is rather the story of a young man who got into bad company and the bad company is this defendant Giglio. I don't say that Robert Taliento deserves any medals for what he did, and he didn't receive any medals.

He knew when he took the stand, he knew when he testified before the grand jury, both he and his lawyer, and as early as last week, he could have been indicted. He received no promises that he would not be indicted. Yes, (R 256)
he went before the grand jury and when he was asked if he wanted to help himself, he said yes. And he did so by testifying truthfully here.

I think it was difficult for this man to testify truthfully. We know he demonstrated one thing, loyalty. He didn't want to disclose the identity of his friend who was hanging around that corner with him and I don't think this is a boy of bad character, I think we can be sorry for this boy. He might have had a promising career as a banker and he still might have a promising career as a plumber.

I submit to you, Ladies and Gentlemen, the evidence in this case establishes beyond a reasonable doubt that on July 26th the defendant John Giglio delivered to Robert Taliento certain Traveler's Express money orders when he knew the same were falsely made out to George Cohen, and that this was done knowingly, and he also knew that

they would go to a California bank from the Brooklyn
(R. 257)
Bank, and that would cause them to be transported in interstate commerce from New York to California—and that this was a plan or scheme that was entered into between this defendant John Giglio and the witness Taliento.

You, pursuant to your sworn oath and your obligation to society and your fellow citizens, must examine this evidence and return a verdict commensurate with it, which I submit supports a verdict of Guilty.

Thank you, Ladies and Gentlemen.

The Court: Ladies and Gentlemen, before starting the instructions I will give you a short recess.

I remind you of your duty not to converse or otherwise communicate amongst yourselves or with anyone else not on the jury upon any subject relating to this case on trial.

The jury is excused for ten minutes and the court will remain in session.

(The jury left the courtroom.)

Mr. Lazarus: Your Honor, I have a motion.

Notice of Motion for a New Trial

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

66 CR 384

UNITED STATES OF AMERICA,

vs.

JOHN GIGLIO,

Defendant.

SIR:

PLEASE TAKE NOTICE that upon the Indictment herein and upon all prior proceedings had herein and upon the affidavit of James M. La Rossa, duly sworn to on the 11th day of July, 1969, the undersigned will move this Court on the 14 day of July, 1969, at a Stated Term for Motions in the United States Courthouse, Cadman Plaza, Brooklyn, New York, at 10 :00 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an Order granting the defendant a new trial on the ground of newly discovered evidence, pursuant to rule 33 of the Federal Rules of Criminal Procedure and for a stay of the mandate of the United States Circuit Court of Appeals for the Second Circuit pending determination herein, and for such other and further relief as to this Court deems just and proper.

Dated: New York, New York
July 11th, 1969

Notice of Motion for a New Trial

Yours, etc.

JAMES M. LA ROSSA
Attorney for defendant
JOHN GIGLIO
Office & P. O. Address
115 Broadway
New York, New York 10006
REctor 2-5600

To:

HON. VINCENT C. MC CARTHY
United States Attorney
for the Eastern District
of New York
United States Courthouse
Brooklyn, New York

Affidavit of James M. La Rossa in Support of Motion

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

66 CR 384

UNITED STATES OF AMERICA,

v.

JOHN GIGLIO,

Defendant.

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

JAMES M. LA ROSSA, being duly sworn, deposes and says:

I am the attorney for defendant John Giglio and am fully familiar with the facts herein.

That the defendant, John Giglio, was charged in a four count Indictment charging violations of Title 18 United States Code, Sections 2314, 2 and 371. Defendant was convicted of two counts charging violation of Title 18 United States Code, Sections 2314 and 2 and one count of conspiracy in violation of Title 18 United States Code Section 371. The defendant was sentenced to five years imprisonment on counts 1 and 4 of the Indictment to run concurrently and on count 3, the Court suspended the execution of sentence and placed defendant on probation for five years to run consecutive to the sentence on counts 1 and 4.

The defendant appealed to the United States Court of Appeals for the Second Circuit and on the 19th day of

May, 1969, the decision of the District Court was affirmed.

One Robert Taliento, a Government witness, testified that he was employed as a teller at the Manufactures Hanover Trust Co. and that on three separate occasions he cashed forged Travelers Express money orders. He further testified that he had received the said checks from the defendant, Giglio, and that he had received a portion of the proceeds from the defendant, Giglio. Mr. Taliento was the only witness the Government offered at the trial herein who implicated defendant, John Giglio of the crime charged.

It necessarily follows that the credibility of Mr. Taliento was an important issue for the jury to determine before passing upon Mr. Giglio's guilt or innocence.

The following excerpts of the record reflect portions of the cross-examination of Mr. Taliento wherein Mr. Taliento denies any promise or offer of consideration from anyone associated with the prosecution.

At page 78 of the record:

> "Q. Did anybody tell you at any time that if you implicated somebody else in this case that you yourself would not be prosecuted? A. Nobody told me I wouldn't be prosecuted.
>
> Q. They told you you might not be prosecuted? A. I believe I still could be prosecuted.
>
> Q. You were told, were you not, that you could be prosecuted in this case, is that correct? A. Yes.
>
> Q. Were you told that you would not be prosecuted if you testified against somebody else? A. Not that I wouldn't be prosecuted.
>
> Q. What were you told?
>
> Mr. Golden: Objection, Your Honor.
>
> The Court: The objection will be overruled.

The Witness: Can you repeat the question?

(The last question was read by the reporter)

A. That there is still a chance I could be prosecuted.

Q. You had a lawyer at one time, did you not?

A. Yes.

Q. Prior to the time you testified before the Grand Jury, you did have this lawyer, is that correct?

A. Yes.

Q. Before you went into the Grand Jury, didn't your attorney advise you in substance that if you testified before the Grand Jury that you would not be prosecuted? A. (No response).

Mr. Lazarus: Withdrawn.

Q. That you would not be a defendant in the case involving the money orders?

The Court: That is a violation of attorney-client privilege, don't you know that?

Mr. Lazarus: No, I think he has a perfect right to answer—

The Court: He doesn't have, counselor. That is a violation and that is not to be asked in this Court.

Do you understand me, Mr. Lazarus?

Mr. Lazarus: I think a party has a perfect right to make a disclosure. I don't think it is privileged.

The Court: Do you have any law for that?

Mr. Lazaraus: I am saying that he may disclose the conversation, that is all I am saying.

The Court: That question will not be asked in this court, Mr. Lazarus—anything that had to do with the conversation of this man with his lawyer.

Q. When you went to the Grand Jury, you went there to help yourself, right? A. I was just advised that I was supposed to be before the Grand Jury.

Q. I can't hear you. A. I don't know if I was helping myself or not.

Q. Did anybody ask you why you were at the Grand Jury if you wanted to help yourself? A. Not that I recall.

Q. Were you there, in effect, to help yourself?

Mr. Golden: Objection, your Honor.

The Court: The objection will be overruled.

Q. Answer. A. The only reason I went to the Grand Jury is because I was subpoenaed.

Q. Do you remember being asked at the Grand Jury whether you wanted to help yourself? A. I don't recall."

Further, at page 86:

"Q. Mr. Taliento, you have not been indicted in this case, have you? A. Not as far as I know.

Q. As far as you know, you are not under indictment anywhere, either in the State or Federal Court? A. No.

Q. You have never been charged with any crime as a result of your activities in this case, have you? A. If I'm still—I could be prosecuted I guess—they could charge me with something.

Q. Were you ever arrested in this case or charged with anything in connection with those money orders that you testified to? A. Not at that particular time.

Q. To this date, have you been charged with any crime? A. Not that I know of, unless they are still going to prosecute.

Q. Up to this time, up to this time, have you been charged with any crime? A. No.

Q. Were you told just before the start of this trial that if you didn't come in here and testify that you might be indicted?"

Again, at page 90:

"A. Chances are I still could be indicted.
Q. Were you told if you did testify you would not be indicted? A. I was told I still could be indicted."

It is apparent from the witness's answers that his contention was that he had received no promises from anyone that he would not be indicted and indicated rather strongly that his subjective feeling was that he could still be indicted for his participation in the acts charged herein.

The Government in its summation relied strongly upon the fact that Mr. Taliento was promised nothing and at page 239 the following excerpt appears:

"Innocent error—that counsel has taken and attempted to blow up beyond what reason would call for—appeals to passion and prejudice, and taking a young man who took the stand knowing he still could be indicted, and certainly very nervous, told a story."

and, again, at page 255:

"No, Ladies and Gentlemen, I submit to you that this is not the kind of a situation that counsel for the defendant submits it it.

The evidence simply does not support his version of this occurrence. It wasn't entrapment or ensnarement of any kind.

I suggest that the evidence fairly points to the fact that this is rather the story of a young man who got

into bad company and the bad company is this defendant Giglio. I don't say that Robert Taliento deserves any medals for what he did, and he didn't receive any medals.

He knew when he took the stand, he knew when he testified before the grand jury, both he and his lawyer, and as early as last week, he could have been indicted. He received no promises that he would not be indicted. Yes, he went before the grand jury and when he was asked if he wanted to help himself, he said yes. And he did no by testifying truthfully here."

Your deponent submits that subsequent to the filing of the Briefs on Appeal before the United States Circuit Court of Appeals for the Second Circuit, I was advised by Anthony DiPaola, an Assistant United States Attorney for the Eastern District of New York, that on September 20th, 1966, he had expressly promised Robert Taliento that if Taliento testified before the Grand Jury against the defendant, John Giglio, he (Taliento) would not be indicted.

It is respectfully submitted that the promise that Taliento would not be indicted was known by the Government, and should have been made known to the defendant and further, that the Government had the duty to inform the defendant under the doctrine of Brady v. Maryland, 373 U.S. 83 (1963) of this fact if the witness Taliento had denied it.

WHEREFORE, your deponent respectfully requests that this motion be granted in all respects.

/s/ JAMES M. LA ROSSA
James M. La Rossa

Sworn to before me this
11th day of July, 1969.

Affidavit of Jerome C. Ditore in Opposition to Motion

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

Docket No. 66 CR 384

UNITED STATES OF AMERICA,

—against—

JOHN GIGLIO,

Defendant

STATE OF NEW YORK
COUNTY OF KINGS
EASTERN DISTRICT OF NEW YORK } ss.:

JEROME C. DITORE, being duly sworn, deposes and says:

He is an Assistant United States Attorney for the Eastern District of New York, duly appointed according to law and acting as such.

This affidavit is submitted in opposition to defendant's motion for an order granting a new trial on the grounds of newly discovered evidence.

On July 6, 1966, defendant JOHN GIGLIO and a co-conspirator and accomplice, Robert Edward Taliento were arraigned before a United States Commissioner for the Eastern District of New York, and charged with violations of 18 U.S.C. §§2314 and 2. (Exh. A. p. 1: Exh. C. p. 1, attached hereto)

This case was assigned to Assistant United States Attorney Anthony J DiPaola. Prior to the presentation of this case to the Grand Jury, Mr. DiPaola discussed the matter with Joseph Darienzo, the attorney for Mr. Taliento in Mr. Taliento's presence. (Exh. A. p. 1). Taliento's attorney refused to have Taliento testify before the Grand Jury if Taliento was actually a prospective defendant. This was well within Taliento's constitutional rights and within the duty of his counsel. The Government required the testimony of Taliento before the Grand Jury as he was the only witness to defendant's criminal acts. The Government, in order to obtain Taliento's testimony before the Grand Jury, stated that it would name Taliento as a co-conspirator rather than a defendant.

Taliento was given no promise nor granted any immunity from further prosecution. Taliento signed a waiver of immunity from prosecution before the Grand Jury (Exh. A, pp. 1-2).

On August 5, 1968, this case was reassigned to Carl Golden, then an Assistant United States Attorney, for trial. (Exh. B. p. 1).

In reviewing the case for trial, Mr. Golden contacted Mr. DiPaola and conferred with him about his knowledge of the case. Mr. DiPaola stated that the reason Mr. Taliento was not indicted was that Taliento was very young and was overreached by the defendant Giglio (Exh. B. p. 2).

Mr. Golden, after some difficulty, communicated with Taliento for the purpose of preparing the case for trial. Mr. Taliento and his father appeared before Mr. Golden and informed Mr. Golden that Taliento would not testify as a witness for the Government because Taliento believed his

life was in danger (Exh. B. p. 3; Exh. C. p. 2).

The matter was brought to the attention of Joseph Hoey, then the United States Attorney for the Eastern District of New York. Mr. Hoey advised Taliento, in the presence of his father, that he could and should have been indicted. Mr. Hoey then suggested that Taliento and his father discuss the matter with Taliento's counsel, Joseph Darienzo (Exh. C. p. 2).

After conferring with his attorney, Taliento, his father, and his counsel returned to Mr. Hoey's office. Taliento's attorney informed Mr. Hoey that he told Taliento that he could be indicted, and advised him to testify. No claim was made that Taliento had received any promise of immunity from prosecution (Exh. C. p. 2).

Mr. Hoey advised Taliento and his attorney that no assurances were given to Taliento that he would not be prosecuted (Exh. C. pp. 2-3).

Taliento after further consultation with his attorney stated that he would testify as a Government witness (Exh. B. p. 3; Exh. C. p. 3).

During the course of Taliento's cross examination at trial by Giglio's counsel. Taliento was asked if he received "any promise or offer of consideration from anyone associated with the prosecution" (Affidavit of James La Rossa, p. 2).

Taliento throughout this questioning continually stated that he believed he could still be prosecuted for his part in the crime (La Rossa's Affidavit pp. 2, 3, 7,). Taliento did not deny or affirm that he received any promises from the Government. The only evidence from Taliento on this issue was that he firmly believed that he could still be indicted and prosecuted by the Government.

Affidavit of Jerome C. Ditore

Prior to the argument of Giglio's appeal from his conviction in this case, Gilgio's appellate counsel, James La Rossa, Esq., states he was advised by Assistant United States Attorney Anthony DiPaola that he, DiPaola, had on September 20, 1966 "expressly promised Robert Taliento that if Taliento testified before the Grand Jury against the defendant, John Giglio, he (Taliento) would not be indicted". (LaRossa Affidavit p. 9).

This alleged statement of Mr. DiPaola is the newly discovered evidence upon which the defendant Giglio seeks a new trial.

Defendant claims that the Government was under a duty, if Taliento denied that any promises of immunity were made to him, to inform the defendant that such a promise was made to Taliento. This information defendant alleges, could have been used at trial, to attack Taliento's credibility (La Rossa Affidavit, pp. 2, 9).

There was no false testimony given by the witness Taliento. His testimony reveals that his answers to the questions on cross examination relative to the issue here, was only that he was told and believed that he could be indicted by the Government for his part in the crime.

This position is clearly set forth by his own testimony, and by the affidavits of Mr. Hoey and Mr. Golden as to what exactly was told Taliento and his attorney. Taliento understood this, as did his attorney. Taliento's testimony was consistent with this position of the Government, and with his waiver of immunity from prosecution.

The Government did not violate *Brady* v. *Maryland*, 373 U.S. 83 (1963). It did not withhold or suppress any evidence favorable to, and requested by, the defendant that was material to the defendant's guilt or punishment. There was

no material evidence suppressed much less a request for such evidence.

The general rule governing motions for a new trial pursuant to Rule 33 of the Federal Rules of Criminal Procedure, based on newly discovered evidence is as follows: 1. the evidence must have been discovered since the trial; 2. it must be material to the factual issues at the trial, and not merely cumulative nor impeaching the character or credit of a witness; and 3. it must be of such a nature that it would probably produce a different verdict in the event of a retrial. *United States* v. *Costello*, 255 F. 2d 876 (2d Cir.), *Cert. denied* 357 U.S. 937 (1958).

The defendant's alleged newly discovered evidence does not meet this test. His motion must be denied. See *United States* v. *Lombardozzi*, 236 F. Supp. 957 (E.D.N.Y. 1964), aff'd. 343 F. 2d 127 (2d Cir. 1965).

Further the alleged base motivation and the alleged lack of credibility of the witness Taliento was amply, completely and strongly brought to the attention of the trial jury during the defense's summation.

The following are examples, taken from the record, of the whole tenor of appellant's attack on Taliento's credibility:

> "This case rests solely in one place, from a man who took that witness stand, Ladies and Gentlemen, and soiled this courtroom— if you observed him and listened to him and watched his demeanor while he testified. There is not another word in this case that connected Mr. Giglio with anything wrong, only Taliento.
>
> There was a time, referring to Taliento's testimony, in England once when they tried a man by a

method of taking his hand and sticking it into a pot of boiling water and when they took it out if it blistered quickly, he was guilty. It would be the same thing if you convicted this defendant on that type of testimony—that is the value of the testimony of Taliento.

Think about Taliento; his demeanor, his manner, and his motive in this case. His motive for testifying as he did—one of the first things Taliento said or was asked on cross-examination was, had he ever made a statement that he was here to help himself when he was testifying in the grand jury. He said yes, he was here to help himself. That was what Taliento did from the moment the case started, help himself.

Taliento was not a defendant in this case or any case, he told you that. Some of the blackest periods in the history of this world have been marked by convictions of men based on testimony of this type, a lying, snivelling man out to help himself. He lied and soiled this witness on the stand and told you as much when he testified there. The audacity to insult your intelligence by taking the stand and taking an oath and telling you that he had no deals with anybody when he met this man, and saying that when he took the card out of the bank he was doing somebody a favor" (T. 220-222).

* * * * *

"What is behind all of this? What is it all about? I said this case rests entirely on the testimony, and you search your memory of this case, and if there is anything connecting this man, other than what this man said in the grand jury—because he wanted to help himself—you've got a trapped rat, a man who when he was trapped started to make up stories. This

guy told so many stories throughout this case that it is disgraceful for him to take the stand and swear to God that he had no deal and he was taking a card out as a favor to somebody." (T. 227-228).

* * * * *

"Take all of these facts; this guy is a cornered rat, pardon the vernacular, and he is looking for any way to hang anybody to save his filthy self. He took the stand and lied. He told you he was confused at one point when he was trapped.

'I was confused,' he said. You don't get confused over a simple question. There was nothing difficult for him to understand, yet he was confused. You can tell the truth when you are confused, it is very simple. Many a confused man tells the truth. He wasn't asked to add a column of figures or do some intricate work, he was asked a simple question. He is telling you he is lying, as he lied throughout this entire trial and as a rat, to save himself. He lied from the very beginning." (T. 232-233).

The jury by its verdict assessed Taliento's credibility, which logically included the very issue here—the question of self preservation or self help *vis-a-vis* the question of credibility.

WHEREFORE, the Government requests that defendant's motion for an order for a new trial be denied.

/s/ JEROME C. DITORE
Jerome C. Ditore
Assistant U.S. Attorney

Sworn to before me this
17th day of October 1969

Exhibit A (Affidavit of J. DiPaola in Opposition) Annexed to Affidavit of Jerome C. Ditore

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

CRIMINAL No. 66 CR 384

UNITED STATES OF AMERICA,

—against—

JOHN GIGLIO,

Defendant.

ANTHONY J. DIPAOLA, being duly sworn, deposes and says that he is an Assistant United States Attorney for the Eastern District of New York, duly appointed according to law and acting as such is familiar with certain facts of this case.

This affidavit is submitted in connection with an application being made by the defendant, JOHN GIGLIO, for an order granting the defendant a new trial on the ground of newly discovered evidence.

On or about July 6, 1966, the defendant, JOHN GIGLIO, and a co-conspirator, ROBERT EDWARD TALIENTO, were arraigned before the Honorable Salvatore T. Abruzzo, then United States Commissioner for the Eastern District of New York, and charged with violations of §§ 2314 and 2 of Title 18, United States Code.

Subsequent thereto, and after conferences with Special Agent Albert O. Axten, of the Federal Bureau of Investiga-

Exhibit A (Affidavit of J. DiPaola in Opposition) Annexed to Affidavit of Jerome C. Ditore

tion, your deponent conferred with Joseph Darienzo, Esq., an attorney who appeared on behalf of the co-conspirator, ROBERT EDWARD TALIENTO.

Present at the conference held at the office of the undersigned, 225 Cadman Plaza East, Brooklyn, New York, were ROBERT EDWARD TALIENTO and his attorney Joseph Darienzo, Esq. It was agreed that if ROBERT EDWARD TALIENTO would testify before the Grand Jury as a witness for the Government, that he would be named as a co-conspirator and would not be indicted. His attorney would not permit ROBERT EDWARD TALIENTO to testify before the Grand Jury if he was going to be indicted.

It was further agreed and understood that he, ROBERT EDWARD TALIENTO, would sign a Waiver of Immunity from prosecution before the Grand Jury, and that if he eventually testified as a witness for the Government at the trial of the defendant, JOHN GIGLIO, he would not be prosecuted.

It was further understood and agreed that if in the event ROBERT EDWARD TALIENTO did not testify at the trial of the defendant, JOHN GIGLIO, he would be prosecuted.

/s/ ANTHONY J. DIPAOLA
Anthony J. DiPaola
Assistant U. S. Attorney

Sworn to before me this
9th day of September 1969.

Exhibit B (Affidavit of Carol Golden in Opposition) Annexed to Affidavit of Jerome C. Ditore

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

No. 66 CR 384

UNITED STATES OF AMERICA,

—against—

JOHN GIGLIO,

Defendant.

CARL GOLDEN, being duly sworn, deposes and says:

I am an attorney duly admitted to practice in this court and, from August 1961 through January 1969, I was an Assistant United States Attorney, duly appointed according to law in the Office of the United States Attorney for the Eastern District of New York.

On August 5, 1968, I returned from a short vacation and was advised that I had been assigned trial responsibility for the case of *United States* v. *John Giglio*, a criminal action.

I had been informed by Mr. Kelly, Chief of the Criminal Division, that it was unlikely that the case against JOHN GIGLIO would proceed to trial until some time in the latter part of August 1968.

On August 5, 1968, I held the position of Chief of the Civil Division and upon my return directed my immediate

attention to a number of matters that had arisen during my absence.

To the best of my recollection, on or about August 6, 1968, I was advised that cases, previously marked "Ready" on the criminal trial calendar, had for various reasons been adjourned and it was likely that the case against JOHN GIGLIO would proceed to trial August 9, 1968.

I immediately reviewed the indictment and the file for purposes of preparing for trial. My review of the indictment and the information in the file pointed up serious questions concerning whether the forged travelers checks alleged in the indictment to have been stolen in interstate commerce were in fact "stolen." I also questioned the failure to indict Robert Taliento as well as the named defendant, JOHN GIGLIO.

I brought the foregoing questions to the attention of Mr. Kelly, who suggested that I discuss them with Mr. Anthony DiPaola, the attorney formerly in charge of the case. I spoke with Mr. DiPaola on August 6, 1968, and he told me that the only information indicating that the travelers checks in issue were stolen was the stamp mark which appeared on the face of each check. Mr. DiPaola further advised that Mr. Taliento had not been granted immunity but that he had not indicted him because Robert Taliento was very young at the time of the alleged occurrence and obviously had been overreached by the defendant GIGLIO. Mr. DiPaola stated that he felt Mr. Taliento's testimony would be very vital to the Government's case and that he had exercised his discretion in not indicting the witness Taliento.

On August 6, 1968 I attempted to communicate with Robert Taliento for purposes of interviewing him prior to

Exhibit B (Affidavit of Carol Golden in Opposition) Annexed to Affidavit of Jerome C. Ditore

trial. I was unsuccessful in reaching Mr. Taliento and later in the afternoon of August 6, 1968 discussed the matter again with Mr. DiPaola. Mr. DiPaola maintained that he felt the witness would be cooperative and stated, to the best of my recollection. "And if he isn't; he could still be indicted." I thereupon prepared subpoenas requiring the witness to be present at my office the following morning.

On or about August 7, 1968, to the best of my recollection, Robert Taliento appeared at my office together with his father. Robert declined to answer the questions I posed to him and when I confronted him with a written statement he had previously given to officers at the bank where he had been employed, Mr. Taliento claimed that he had a loss of memory. At this point Mr. Taliento's father stated "I would rather have my boy alive than have him testify and be killed." I reminded Robert Taliento and his father that the witness had not been granted immunity and could still be indicted, and suggested that they remain in the room while I attempted to arrange an appointment for them to meet with the United States Attorney, Joseph P. Hoey.

Thereafter I spoke with Mr. Hoey and advised him of my conversation with Robert Taliento and his father, and ushered Robert Taliento and his father into the United States Attorney's office. The elder Taliento repeated his fears concerning his son's life to Mr. Hoey and Mr. Hoey sought to elicit from the elder Taliento the basis for his fears. The elder Taliento merely repeated he feared his son would be killed, if he testified and was unable to furnish Mr. Hoey with identity or names of the persons he believed were threatening his son's life. After discussing the matter with the elder Taliento for about twenty minutes Mr. Hoey unequivocally stated that if Robert Taliento refused to testify

Exhibit B (Affidavit of Carol Golden in Opposition) Annexed to Affidavit of Jerome C. Ditore

he would have no alternative other than to indict the witness. Mr. Hoey suggested that the elder Taliento and Robert Taliento confer with the attorney who represented the young man at the time he appeared before the Grand Jury and that counsel see him and advise Mr. Hoey as to their decision.

Later in the afternoon of August 7, 1968, Robert Taliento, his father and Mr. Darienzo, their attorney appeared in my office. I was introduced by the elder Taliento to Mr. Darienzo and was advised that Robert Taliento and his father had discussed their situation with counsel and were prepared to meet with the United States Attorney. I thereupon advised Mr. Hoey of the foregoing and he immediately met with the Talientos and their attorney. I was present when Mr. Hoey told Mr. Darienzo, in the presence of his client, that Robert Taliento had not been granted immunity and that if he refused to testify in the pending criminal action against JOHN GIGLIO, he would be indicted. As I recall, Mr. Darienzo stated to his client, in my presence and in the presence of Mr. Hoey, Robert Taliento would have to testify or face indictment and that he, as Robert Taliento's attorney, recommended that the young man testify. Mr. Darienzo asked for some time to discuss the matter further with his client, and stated that he would telephone me later that day or the following morning at the latest.

Mr. Darienzo telephoned me at about 9:30 a.m., August 8, 1968 and advised that Robert Taliento would testify as a Government witness and that he would arrive at my office at about 10:00 a.m.

CARL GOLDEN

Sworn to before me this
17th day of October, 1969

Exhibit C (Affidavit of Joseph P. Hoey in Opposition) Annexed to Affidavit of Jerome C. Ditore

UNITED STATES DISTRICT COURT.

EASTERN DISTRICT OF NEW YORK

No. 66 CR 384

UNITED STATES OF AMERICA

— against —

JOHN GIGLIO

Defendant.

JOSEPH P. HOEY, being duly sworn, deposes and says that he is an attorney admitted to practice law in this Court. From April 18, 1961 until February 12, 1969 he was United States Attorney for this District, duly appointed according to law.

This affidavit is submitted in connection with an application being made by the defendant JOHN GIGLIO for an order granting the defendant a new trial on the grounds of newly discovered evidence.

The defendant JOHN GIGLIO and one Robert Taliento were arraigned before the United States Commissioner on a charge of violation of Title 18 United States Code §§ 2314 and 2. Thereafter, on September 20, 1966, a Grand Jury of this District heard testimony against the defendant JOHN GIGLIO, at which time Robert Taliento testified after executing a waiver of immunity. Assistant U.S. Attorney Anthony

Exhibit C (Affidavit of Joseph P. Hoey in Opposition) Annexed to Affidavit of Jerome C. Ditore

DiPaola presented the case to the Grand Jury. Defendant GIGLIO pleaded not guilty on October 6, 1966. From the time of the arraignment of GIGLIO up to July 29, 1968, the case had been assigned to Assistant U.S. Attorney DiPaola. At that time the case was reassigned to Carl Golden the Assistant U.S. Attorney in charge of the Civil Division for trial.

After reviewing the file and the indictment, Mr. Golden conferred with the undersigned. On August 7, 1968 in the A.M., he advised your deponent that Robert Taliento and his father had appeared at his office and that Robert Taliento refused to testify as a witness, stating that he feared for his safety. The elder Taliento, according to Mr. Golden, concurred in the decision.

Your deponent then conferred with Robert and his father in the presence of Mr. Golden. Your deponent inquired as to the source of the belief of the elder Taliento that Robert's life was in danger and was informed that it was an indefinite fear—nothing else. A discussion was held. They were informed that Robert Taliento could and should have been indicted as a co-defendant with GIGLIO. Your deponent then suggested that they confer with their attorney, Mr. Darienzo, and return in the afternoon to confer with your deponent.

In the meantime, Mr. Darienzo was contacted by your deponent who explained the situation to him. The Talientos left to confer with Mr. Darienzo.

Shortly after 3:00 p.m. the Talientos, accompanied by Mr. Darienzo, returned. A discussion was had concerning the reluctance of Robert Taliento to testify. Mr. Darienzo stated that he had advised his client that he could be indicted under the facts as developed in the case and that he would advise his client to testify. Mr. Darienzo did not claim that

Exhibit C (Affidavit of Joseph P. Hoey in Opposition) Annexed to Affidavit of Jerome C. Ditore

his client Robert Taliento received immunity or was made any promises. No assurances were given to Mr. Darienzo or to the Talientos except that they would have to rely on the good judgment and conscience of the Government. On the following day, August 8th, the undersigned was informed that Taliento appeared and was interviewed by Mr. Golden.

JOSEPH P. HOEY

Sworn to before me this
17th day of October, 1969.

Reply Affidavit of James M. La Rossa in Support of Motion

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

66 CR 384

UNITED STATES OF AMERICA,

—vs.—

JOHN GIGLIO,

Defendant.

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

JAMES M. LA ROSSA, being duly sworn, deposes and says:

That he is the attorney for defendant herein and this affidavit is submitted in reply to the affidavit in opposition to the defendant's motion for a new trial.

Your deponent submits that Exhibit A of the Government's affidavit in opposition, namely, an affidavit of Anthony J. Di Paola, Esq., containing the admission of the alleged promised consideration, i.e. that the witness Taliento would not be prosecuted, is the only relevant issue at bar. Mr. Di Paola, an Assistant United States Attorney for the Eastern District of New York, stated un equivocally:

> "It was further agreed and understood that he, Robert Edward Taliento, would sign a Waiver of Immunity from prosecution before the grand Jury, *and that if he eventually testified as a witness for the Government at the trial of the defendant, John Giglio, he would not be prosecuted.*" [Italics mine.]

Reply Affidavit of James M. La Rossa in Support of Motion

When Robert Taliento took the stand and testified against the defendant, John Giglio, as a Government witness, he completed the last requirement on his part to insure the fact of his not being prosecuted. It is apparent, therefore, that when Mr. Taliento testified he did so with the absolute knowledge that he would not be prosecuted (see Di Paola affidavit) and this fact should have been before the jury. When the Witness Taliento, obviously in an attempt to mislead the jury, stated that he still could be prosecuted, the Government had an absolute duty to correct this perjurious statement and insure that the jury was made aware of the entire facts relating to their agreement with the witness which fact would necessarily assist the jury in appraising the credibility of the witness.

The Government cites in its affidavit in opposition two cases which they submit are controlling, namely, *United States* v. *Costello*, 255 F. 2d 876 and *United States* v. *Lombardozzi*, 236 F. Supp. (1957) Aff'd 343 F. 2d 127. Your deponent respectfully submits that they are in error and these cases are not applicable in the instant case. In the *Lombardozzi* case, (Supra), the issue of newly discovered evidence was presented in the form of a Federal Bureau of Investigation report that one of the Government witnesses was mentally and emotionally unstable. This situation is clearly distinguishable from the instant case where we are faced with the issue of perjured testimony.

Your deponent respectfully calls this Court's attention to the recent decision of the United States Court of Appeals for the Second Circuit in *United States* v. *Polisi*, decided on September 25th, 1969. In that case such a distinction was

brought to the Court's attention. After reviewing the generally held essentials of a new trial based on newly discovered evidence, i.e. 1) the evidence must have been discovered since the trial; 2) it must be material to the factual issues at the trial and not merely cumulative nor impeaching the character or credit of the witness; 3) it must be of such a nature that it would probably produce a different verdict in the event of a re-trial, the Court found that this general rule does not apply where 1) perjured testimony is in issue; 2) where the prosecutor has suppressed evidence which would be favorable to the defendant. Reviewing the United States Supreme Court's decision in *Napue* v. *Illinois*, 360 U.S. 264 (1959), the Court reaffirmed the Supreme Court's holding that where the prosecutor fails to disclose evidence

> "... of obvious value to the accused ... (this) requires a new trial even where the perjury concerned only the credibility of the witness."

With respect to the Government's statement that

> "... alleged lack of credibility of the witness Taliento was amply, completely and strongly brought to the attention of the trial jury during defense's summation"

your deponent respectfully submits that neither the Government nor this Court has the authority to make such a determination. The Court, in *Polisi*, Supra), stated that

> "Where the conviction is shown to be based even in part upon perjured testimony, however, a Court will not stop to inquire as to the precise effect of the perjury, but will order a new trial, if without the perjury the jury might not have convicted."

Reply Affidavit of James M. La Rossa in Support of Motion

(*Mesarosh* v. *United States*, 352 U.S. 1, 1956; *Larrison* v. *United States*, 24 F. 2d 82 (7th Cir., 1928). The Court then went on to hold that

> "A new trial is required even though Cordero's testimony 'probably' would not have produced a different verdict."

The facts in the case at bar demonstrate even more clearly the necessity for the application of the *Napue* rule. In the *Polisi* case, the witness Cordero was only one of four principal Government witnesses. It is easy to speculate that a conviction may well have resulted without the aid of his testimony or in fact, if his testimony had been completely disregarded by the jury. In the instant case, however, the witness in question was the only witness to implicate the defendant JOHN GIGLIO.

WHEREFORE, defendant requests that his motion for a new trial pursuant to Rule 33 of the Federal Rules of Criminal Procedure be granted in all respects.

JAMES M. LA ROSSA

Sworn to before me this
24th day of October, 1969.

Order and Opinion Denying Motion for New Trial

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

66 CR 384

UNITED STATES OF AMERICA,

vs.

JOHN GIGLIO,

Defendant.

Defendant moves the Court to order a new trial, following conviction of violation of 18 U.S.C. §§ 2314, 2 and 371. Defendant appealed his conviction. The conviction was affirmed on June 13, 1969.

Defendant now claims newly discovered evidence as his grounds for this motion—claiming the government's alleged suppression of certain evidence tending to impeach the credibility of the government's principal witness, Robert Edward Taliento.

To place this matter in proper perspective a short review of the authorities may be helpful. Initially the United States Supreme Court held that knowing use by the prosecution of false evidence is impermissible, *Mooney* v. *Holohan*, 294 U.S. 103, 79 L.Ed. 791, 55 S. Ct. 340 (1935); *Pyle* v. *Kansas*, 317 U.S. 213, 87 L. Ed. 214, 63 S. Ct. 177 (1942). See also *Curran* v. *Delaware*, 259 F. 2d 707.

Napue v. *Illinois*, 360 U.S. 264, 3 L.Ed. 2d 1217, 79 S. Ct. 1173 extended the perimeters of impermissible use of false evidence to those situations in which the government, though not participating in the presentation of false evidence, allows it to remain uncorrected after discovery of its false nature. This applied both to the substantive issues of the crime and the credibility of witnesses.

The broadest application of due process considerations in the suppression of evidence by the government came in *Brady* v. *Maryland*, 373 U.S. 83, 10 L.Ed 2d 215, 83 S. Ct. 1194. Here the Court focused upon the materiality of the claimed suppressed evidence rather than the bona fides of government prosecutors. The standard was articulated by Mr. Justice Douglas when he says at pages 87-88:

> "The principle of *Mooney* v. *Holohan* is not punishment of society for misdeeds of a prosecutor but avoidance of an unfair trial to the accused. Society wins not only when the guilty are convicted but when criminal trials are fair; our system of the administration of justice suffers when any accused is treated unfairly. An Inscription on the walls of the Department of Justice states the proposition for the federal domain: 'The United States wins its point whenever justice is done its citizens in the courts.' A prosecution that withholds evidence on demand of an accused which, if made available, would tend to exculpate him or reduce the penalty helps shape a trial that bears heavily on the defendant. That casts the prosecutor in the role of an architect of a proceeding that does not comport with standards of justice, even though, as in the present case, his action is not 'the result of guile,' . . ."

Even prior to *Brady* (supra), Courts of Appeal were concerned with those questions. See *Kyle* v. *United States*, 297 F. 2d 507 (2d Cir. 1961), (defendant's burden of proving prejudice is increased where the prosecution is merely negligent).

The concern has not lessened since *Brady* (supra); *United States* v. *Poole*, 379 F. 2d 645, 648 (7th Cir. 1967), (prejudice held to be a prerequisite for relief in collateral proceedings where the prosecution has not actively solicited the suppression of evidence); *United States* v. *Wilkins*, 326 F. 2d 135 (2d Cir. 1964), (materiality is the criterion, and not the good or bad faith of the prosecution); see also, *Williams* v. *Dutton*, 400 F. 2d 797 (5th Cir. 1968); *Hawkins* v. *United States*, 324 F. 2d 873 (5th Cir. 1963).

Defendant presses on the Court as positive authority for grant of the new trial requested herein, the recent decision of the Second Circuit in *United States* v. *Polisi*, 416 F. 2d 573. Defendant misreads the language and import of *Polisi* (supra). The Court in *Polisi* lays down its rule at page 578:

> "... In order to violate the defendant's constitutional right to evidence necessary to the preparation of his defense, '[t]he evidence must also be shown to be *material and of some substantial use to the defendant.*'" [emphasis added in Polisi]

We are here concerned with the testimony of Robert Edward Taliento. That testimony was elicited, not under a grant of immunity from the prosecution, but after consultation with Mr. Joseph Hoey, United States Attorney,—the only person who could authorize the grant of immunity

—and advice that he (Taliento) could and would be prosecuted if he did not testify.

The facts were before the jury—Taliento was an accomplice—Taliento had not to the date of trial been indicted by any governmental agency for his part in the alleged crimes—Taliento still believed he could be prosecuted. The interest of Taliento was vigorously argued by counsel for defendant. Nothing was left unsaid. It is inconceivable the result would or should be changed.

The motion for new trial is denied.

Dated: March 11, 1970.

/s/ Manuel L. Real
Manuel L. Real
United States District Judge

Judgment and Commitment and Order of Probation

UNITED STATES DISTRICT COURT

FOR THE

EASTERN DISTRICT OF NEW YORK

No. 66 CR 384

UNITED STATES OF AMERICA

v.

JOHN GIGLIO

On this 29th day of October, 1968 came the attorney for the government and the defendant appeared in person and with counsel.

IT IS ADJUDGED that the defendant has been convicted upon a verdict of guilty of the offense of violating T-18, U.S. Code, Secs. 2314, 2 and 371, that on or about and between June 26 and June 28, 1968, both dates being approximate and inclusive, the defendant, with another, did conspire to commit offenses against the U.S., by transporting in interstate commerce from New York to California, several Travelers Express money Orders, knowing the same to have been forged and stolen as charged in counts 1, 2 & 4 and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

Judgment and Commitment and Order of Probation

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Five (5) years on count 1, Five (5) years on count 2 and Five (5) years on count 4. Sentences on counts 1 and 4 to run concurrently pursuant to Section 4208(a)(2) of Title 18, U.S. Code. Sentence on count (2) is suspended and the defendant is placed on probation, to run consecutively with sentence imposed on counts 1 and 4 and subject to the standard conditions of probation as set forth in the standing order of this Court dated October 13, 1964.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

MANUEL REAL
United States District Judge

Notice of Appeal

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

66 CR 384

UNITED STATES OF AMERICA,

—vs—

JOHN GIGLIO,

Defendant.

NOTICE IS HEREBY GIVEN that JOHN GIGLIO, defendant above named, hereby appeals to the United States Court of Appeals for the Second Circuit from an Order of the Hon. MANUEL L. REAL denying a Motion for a new trial which judgment was entered in this action on the 11th day of March, 1970.

Dated: New York, New York
March 27th, 1970

Yours, etc.

JAMES M. LA ROSSA
Attorney for defendant
JOHN GIGLIO
Office & P. O. Address
115 Broadway
New York, New York 10006
REctor 2-5600

Judgment of U.S. Court of Appeals for the Second Circuit

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the twenty-third day of September one thousand nine hundred and seventy.

Present:

HON. J. EDWARD LUMBARD,
Chief Judge,

HON. ROBERT P. ANDERSON,
HON. WILFRED FEINBERG,
Circuit Judges.

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JOHN GIGLIO,

Defendant-Appellant.

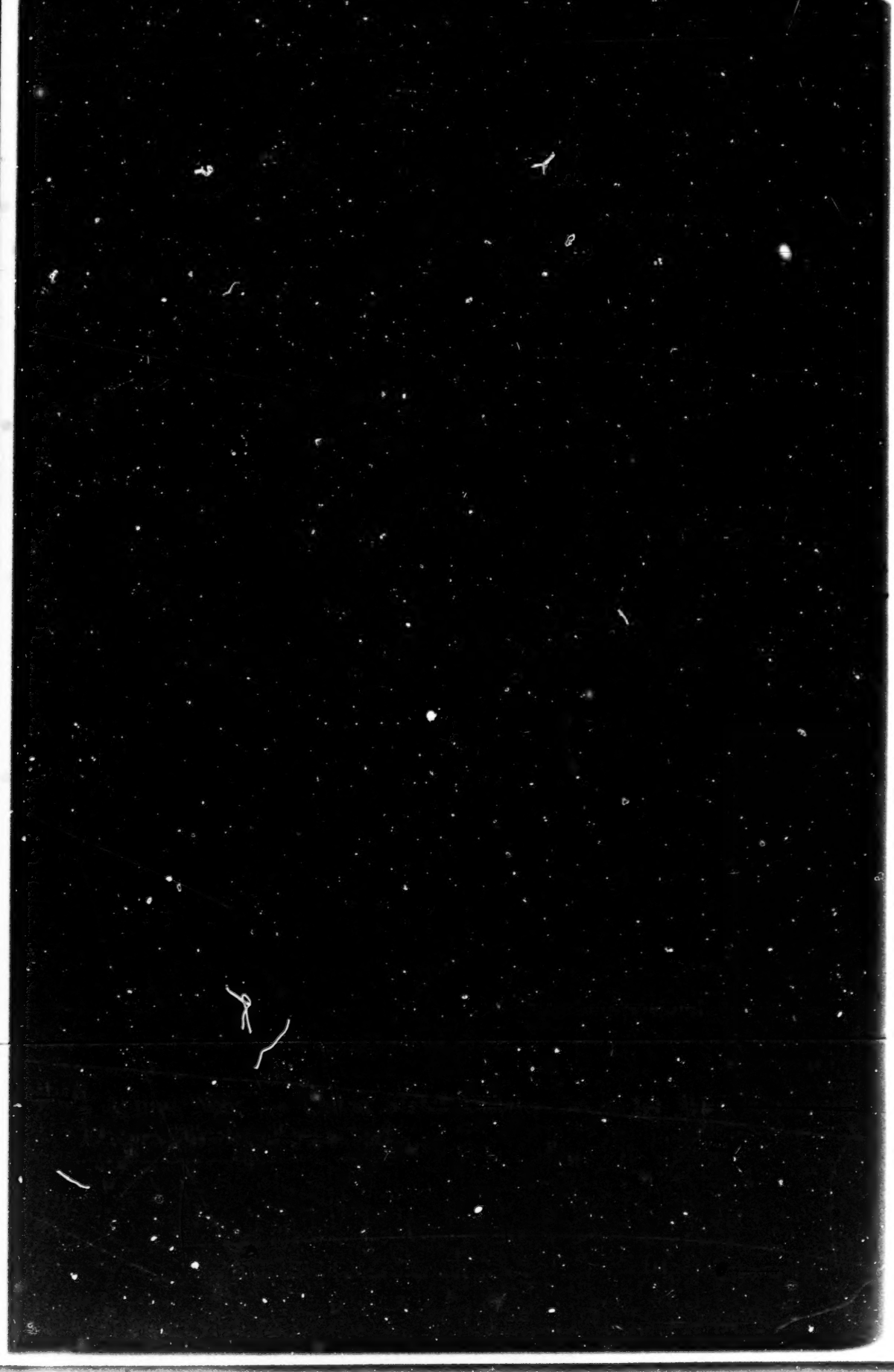
Appeal from the United States District Court for the Eastern District of New York.

Judgment of U. S. Court of Appeals for the Second Circuit

This cause came on to be heard on the transcript of record from the United States District Court for the Eastern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the order of said District Court be and it hereby is affirmed.

A. DANIEL FUSARO
Clerk



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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. ~~897~~ 70-29

JOHN GIGLIO,

Petitioner,

v.

UNITED STATES OF AMERICA.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

JAMES M. LA ROSSA
115 Broadway
New York, New York 10006
Counsel for Petitioner

October 23, 1970

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IN THE

Supreme Court of the United States

October Term, 1970

No.

JOHN GIGLIO,

Petitioner,

v.

UNITED STATES OF AMERICA.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

The Petitioner, John Giglio, prays that a Writ of Certiorari issue to review the judgment entered on September 23, 1970, by the United States Court of Appeals for the Second Circuit in the proceeding entitled United States of America, Appellee vs. John Giglio, Defendant-Appellant, Docket No. 34973.

Opinions Below

The judgment of the District Court was affirmed by the Court of Appeals for the Second Circuit in open Court with no opinion. The judgment of the Court of Appeals appears in the Appendix at p. A1.

Jurisdiction

The judgment of the Court of Appeals was entered on September 23, 1970. The jurisdiction of this Court is invoked under Title 28 United States Code, Section 1254(1).

Questions Presented

1. Is newly discovered evidence of a prosecutor's promise of immunity to the Government's main witness, where the fact of that promise had been suppressed, sufficient basis for a new trial pursuant to Rule 33 of the Federal Rules of Criminal Procedure?

2. Is a promise of immunity made by an Assistant United States Attorney attributable to the United States Attorney?

Statutory Provisions

Rule 33 of the Federal Rules of Criminal Procedure.

Rule 33. New Trial

The court on motion of a defendant may grant a new trial to him if required in the interest of justice. If trial was by the court without a jury the court on motion of a defendant for a new trial may vacate the judgment if entered, take additional testimony and direct the entry of a new judgment. A motion for a new trial based on the ground of newly discovered evidence may be made only before or within two years after final judgment, but if an appeal is pending the court may grant the motion only on remand of the case. A motion for a new trial based on any

other grounds shall be made within 7 days after verdict or finding of guilty or within such further time as the court may fix during the 7-day period. As amended Feb. 28, 1966, eff. July 1, 1966.

Constitutional Provision Involved

Constitution of the United States, Amendment V

No person shall . . . be deprived of life, liberty, or property, without due process of law. . .

Statement of the Case

The Petitioner, John Giglio, was convicted in the United States District Court for the Eastern District of New York of two counts of violation of Title 18, United States Code, Sections 2314 and 2 and one count of conspiracy in violation of Title 18, United States Code, Section 371. The Petitioner appealed that judgment of conviction in the United States Court of Appeals for the Second Circuit wherein that conviction was affirmed. With respect to that decision of the Circuit Court, no Petition for Certiorari was filed. Subsequent to that decision Petitioner filed a Motion for a new trial based on newly discovered evidence. The District Court denied Petitioner's Motion and this Order was affirmed by the Circuit Court. The facts which underlie the question herein presented relate to certain promises made to the Government's main witness, the existence of which were discovered subsequent to the time when the Petitioner had filed his original Brief on Appeal.

Robert Taliento, the only Government witness to inculpate the Petitioner, testified that he had received no promise of immunity from prosecution in return for the testimony which he gave. At page 78 of the record in the United States Court of Appeals for the Second Circuit, Taliento's testimony was as follows:

> "Q. Did anybody tell you at any time that if you implicated somebody else in this case that you yourself would not be prosecuted? A. Nobody told me I wouldn't be prosecuted.
>
> Q. They told you you might not be prosecuted? A. I believe I still could be prosecuted.
>
> Q. You were told, were you not, that you could be prosecuted in this case, is that correct? A. Yes.
>
> Q. Were you told that you would not be prosecuted if you testified against somebody else? A. Not that I wouldn't be prosecuted.
>
> Q. What were you told?
>
> Mr. Golden: Objection, Your Honor.
>
> The Court: The objection will be overruled.
>
> The Witness: Can you repeat the question? (The last question was read by the reporter)
>
> A. That there is still a chance I could be prosecuted."

The net effect of this testimony was that there was absolutely and unequivocally no promise that the witness would not be prosecuted if he cooperated with the Government. This assertion is further compounded by the Assistant United States Attorney's reference to it in his closing argument to the jury. In summation the Government attorney flatly stated that

> "He (Taliento) received no promises that he would not be indicted".

Where the question of credibility was so important an issue, the jury, through the testimony of the witness and

the summation of the prosecutor, was led to believe that Taliento received no assurances that he would not be prosecuted. While it is true that the jury could have drawn inferences from the fact that the witness had not yet been indicted, there was no substantive proof that Taliento had any ulterior motive for testifying.

The newly discovered evidence which the Petitioner relied upon in bringing his motion for a new trial in the District Court, was disclosure of the fact that there was an express promise made to Taliento that he would not be prosecuted if he agreed to become a witness against Giglio. Discovery of this fact was made subsequent to the time when the Petitioner had originally filed his Brief on Appeal. Petitioner's counsel was advised by Assistant United States Attorney Anthony DiPaola, who was originally assigned to prosecute the matter, that on September 20, 1966, he had expressly promised Taliento that if Taliento testified before the Grand Jury against the Petitioner, he (Taliento) would not be indicted. This information was affirmed by Mr. DiPaola in an affidavit which he submitted to the District Court (A-32)* Mr. DiPaola's affidavit reads in part as follows:

> "It was further agreed and understood that he, ROBERT EDWARD TALIENTO, would sign a waiver of immunity from prosecution before the Grand Jury, and that if he eventually testified as a witness for the Government at the trial of the defendant, JOHN GIGLIO, he would not be prosecuted."

Assistant United States Attorney DiPaola, although originally in charge of the Giglio file, was not the Assistant

---

* "A" refers to the Appendix in United States Court of Appeals for the Second Circuit.

United States Attorney who eventually tried the case. The question which was presented to the Court of Appeals, therefore, was twofold. First, was the United States Attorney, in his position as trial counsel for the Government, responsible for the promises made by the Assistant United States Attorney who originally had charge of the prosecution? The second issue was whether Taliento's perjurious testimony that he had not been promised immunity was sufficient basis for a new trial, where the existence of that promise was discovered subsequent to the initial trial.

Reasons for Granting the Writ

The decision below directly conflicts with the due process principles enunciated in this Court's ruling in *Napue* and *Brady*.

This Petition presents a significant question concerning the application of the doctrine of *Napue* v. *State of Illinois*, 360 U.S. 264 (1959) and *Brady* v. *Maryland*, 373 U.S. 83 (1963) in Federal Criminal Prosecutions.

As early as 1935, this Court held in *Mooney* v. *Holohan*, 294 U.S. 103 (1935), that a prosecuting attorney was under a Constitutional duty to disclose evidence which was beneficial to the defendant's case. There it was held that a conviction obtained through the use of knowingly false and perjured testimony cannot be permitted to stand. In *Napue (supra)*, this Court extended the above stated rule when presented with a factual pattern unmistakeably similar to the case at bar. The *Napue* case stands for the proposition that a defendant's Constitutional right to due process is also denied when false testimony relates to the credibility of the witness rather than the substance of the testimony.

Four years later, this Court held in *Brady* that due process forbids the Government to "withhold . . . evidence favorable to an accused upon request . . . where that evidence is material to either guilt or punishment". (373 U.S. at p. 87) Thus, under the *Brady* rule, evidence under the control of the Government which is "material" and "favorable" to an accused's defense must be divulged.

In the case at bar, there is no question about the fact that such material did, in fact, exist. The affidavit of Assistant United States Attorney DiPaola leaves no question but that a promise was made that the principal witness would not be prosecuted in return for his testimony. The trial transcript leaves little doubt but that this information was not divulged to the defense. The question presented to this Court, therefore, is whether the failure of the Government to divulge such information is sufficient basis for a new trial.

The Second Circuit Court of Appeals in *United States v. Polisi*, 416 F. 2d 573, (2nd Cir., 1969) presented what appeared to be a clear application of standards with respect to a new trial where prosecutorial misconduct was involved. In *Polisi*, which involved the Government's failure to reveal a conflicting statement made by the defendant's accomplice, the Court stated that the general rules with respect to the granting of a new trial, do not apply

> ". . . where the prosecutor has suppressed evidence exculpatory of or otherwise favorable to the accused." (577)

The Circuit Court further states that this rule is applicable even where the issue involves only the credibility of a witness and not the facts at issue citing *Napue (supra)*. The

Court, by applying the principles set forth in *Brady*, reached the conclusion that a defendant is entitled to a new trial even where the suppressed evidence would probably not have caused a different verdict and even though the primary effect would only be to impeach the credibility of the witnesses.

The decision of the Circuit Court of Appeals in the case at bar casts a shadow of uncertainty regarding standards with respect to a motion for a new trial based on newly discovered evidence. The fact that the District Court's Order denying Petitioner's Motion for a new trial was affirmed without opinion creates even more far reaching difficulties. Does the Petitioner's bid for a new trial fail in terms of *Napue, Brady* and *Polisi*? Or is it that the promise made by the Assistant United States Attorney who originally had charge of the file is not binding on the Government? The latter proposition, it is respectfully submitted, is untenable. The fact that the proper categorization of the problem is left to speculation, dramatizes the necessity for this Court to review this issue which is of such pragmatic and fundamental importance to the proper administration of criminal justice. Can it be the rule of our Federal Courts that the prosecutorial team as a whole is not bound by representations of a member of that team who apparently had the authority to make such representations?

Although this Court has never directly spoken to this issue, various decisions of our lower courts have made it clear that a prosecutor cannot disavow representations made by other members of the prosecutorial team.

In an often quoted decision, *Application of Kapatos*, 208 F. Supp. 883 (S.D.N.Y. 1962), Judge Palmieri stated

> "... I do not think that an accused's right as defined by Napue should depend on the fortuitous circumstance that the District Attorney who conducts the investigation also conducts the prosecution, ..."

In the instant case there is no issue as to whether Taliento was a central witness; he was, in fact, the only witness to inculpate the Petitioner. Nor is there a question under *Napue* of whether his false testimony was significant. In *Hawkins* v. *United States*, 324 F. 2nd 873 (5th Cir., 1963) the Court was faced with a similar problem. An Assistant United States Attorney who allegedly made promises of leniency to Government witnesses in consideration for their testimony, was not the Assistant who later tried the case at the trial in issue. The Circuit Court found that

> "At the time these witnesses so testified the Government must be charged with knowledge that their testimony was false."

There are several other decisions, both on the Circuit and District Court levels which support the position taken by the Court in *Kapatos* and *Hawkins* (*supra*). See *Barbee* v. *Maryland*, 331 F. 2d 842 (4th Cir., 1964); *Nash* v. *Purdy*, 283 F. Supp. 837 (S.D. Fla. 1968); *Walker* v. *Bishop*, 295 F. Supp. 767 (E.D. Ark. 1967).

It is respectfully submitted that the decision below runs contrary to the current view of fundamental fairness in criminal prosecutions under the due process clause of the Fifth Amendment. There can be no question but that the disclosure of the promise made by Assistant United States Attorney DiPaola would have been both favorable and material to the defense. Where the question of the witness's

credibility was so important an issue, this evidence would undoubtedly have had a dramatic impact upon the jury.

To paraphrase this Court's language in *Brady*, society must share the Petitioner's awful loss, because the system of justice imposed upon him was fundamentally unfair.

CONCLUSION

For these reasons a Writ of Certiorari should issue to review the judgment of the United States Court of Appeals for the Second Circuit.

Respectfully submitted

James M. La Rossa
115 Broadway
New York, New York 10006
Counsel for Petitioner

October 23, 1970

APPENDIX

Judgment of United States Court of Appeals for the Second Circuit

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the twenty-third day of September one thousand nine hundred and seventy.

Present:

HON. J. EDWARD LUMBARD,
Chief Judge,

HON. ROBERT P. ANDERSON,

HON. WILFRED FEINBERG,
Circuit Judges.

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

JOHN GIGLIO,
Defendant-Appellant.

Appendix—Judgment of United States Court of Appeals for the Second Circuit

Appeal from the United States District Court for the Eastern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Eastern District of New York, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the order of said District Court be and it hereby is affirmed.

A. Daniel Fusaro
Clerk

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No. ~~392~~

In the Supreme Court of the United States

OCTOBER TERM, 1970 70-29

JOHN GIGLIO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
WILL WILSON,
Assistant Attorney General,
ROGER A. PAULEY,
CRAIG M. BRADLEY,
Attorneys,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 892

JOHN GIGLIO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The court of appeals affirmed without opinion (Pet. App.).

JURISDICTION

The judgment of the court of appeals was entered on September 23, 1970. On October 23, 1970, the petition for a writ of certiorari was filed. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the claim of newly discovered evidence concerning a promise of immunity by a prosecutor to a government witness provides grounds for a new trial.

409-771—70

STATEMENT

After a jury trial in the United States District Court for the Eastern District of New York, petitioner was convicted of transporting forged money orders in violation of 18 U.S.C. 2314 (2 counts) and of conspiracy in violation of 18 U.S.C. 371 (1 count). He was sentenced to five years' imprisonment on each count, two sentences to run concurrently and the third consecutively, but suspended. The conviction was affirmed from the bench on May 19, 1969.

The facts adduced at trial showed that petitioner was the initiator (Tr. 41–42) of a scheme whereby Robert Taliento, a young bank teller, would cash for petitioner stolen Traveller's Express Money Orders (Tr. 181) which had been endorsed with the forged signature of a regular customer of Taliento's bank (Tr. 43). On June 27, 1966, Taliento cashed $2300 in money orders given to him, by petitioner; that night he gave the money to petitioner and received $500 (Tr. 51–53). The next day Taliento gave petitioner $2100 from money orders he had cashed for petitioner and again received $500 (Tr. 24, 59–61). On July 5, 1966, petitioner came to the bank himself and cashed money orders with Taliento worth $3000 (Tr. 63). That same day, the FBI spoke to Taliento and obtained his cooperation in apprehending petitioner (Tr. 65, 185). Taliento called petitioner and arranged to meet him at 11 p.m. (Tr. 186). After they met and began walking up the street, the FBI arrested petitioner, who had $550 in large bills on his person (Tr. 188, 198).

On March 11, 1970, petitioner's motion for a new trial on the basis of newly discovered evidence was denied by the district court. The court of appeals affirmed without opinion. It is from this latter judgment that the instant petition arises.

ARGUMENT

Petitioner argues that evidence of a promise of immunity from prosecution, given to Taliento by an Assistant United States Attorney, should have resulted in a new trial. The promise ((allegedly "discovered" while the case was pending on appeal) was made to Taliento by Assistant United States Attorney Di Paola in the summer of 1966, prior to Taliento's testimony before the federal grand jury and some two years before trial. Di Paola confirmed this arrangement in an affidavit filed by petitioner (A. 33).[1] However, by the time the case came to trial two years later, a new Assistant United States Attorney, Carl Golden, was in charge of the case. He was aware of the fact that Taliento had cooperated and would not, therefore, be indicted. He was not aware that an express promise to that effect had been made (A. 37). Prior to trial Taliento indicated to Golden that he did not want to testify (A. 38) and was told that he had not been granted immunity from prosecution and could still be prosecuted if he did not testify (A. 38);[2] Taliento

[1] "A" refers to appellant's appendix in the court of appeals.

[2] This was correct in fact; Di Paola's affidavit stated that his promise of immunity had been expressly conditioned on petitioner's testifying at trial (A. 33–34).

thereupon agreed to do so on the advice of counsel (A. 40).

At trial, petitioner presented no witnesses; he based his entire case on an attempt to impeach Taliento. His counsel on cross-examination elicited an admission that Taliento had testified before the grand jury in order to help himself (Tr. 80). In response to further questioning, Taliento stated his belief that he could still be prosecuted (Tr. 86–87). That Taliento's testimony was motivated by personal interest was emphasized by defense counsel in his summation (Tr. 221).[3]

On these facts the courts below were correct in ruling that the evidence as to the promise of immunity did not require a new trial. Quite plainly, admission into evidence of a promise of immunity would not have benefited petitioner's case—indeed it might have harmed it. A jury could well conclude that a witness testifying under an absolute promise of immunity would be more likely to be truthful than one who might still be prosecuted and thus fearful of displeasing the government by testifying adversely to its case.

[3] The prosecutor also pointed out in summation that Taliento testified in an attempt to help himself (Tr. 256).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE PETITIONER

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April 15, 1971

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BRIEF FOR THE PETITIONER

Opinions Below

The Judgment of the District Court was affirmed by the Court of Appeals for the Second Circuit in open Court with no opinion. The judgment of the Court of Appeals appears in the Appendix at page A 156. The Order and Opinion of the District Court appears in the Appendix at page A 149.

Jurisdiction

The Judgment of the Court of Appeals was entered on September 23rd, 1970. (A 156) The Petition was filed October 23rd, 1970, and was granted March 1st, 1971. The

jurisdiction of this Court is invoked under Title 28, United States Code, Section 1254(1).

Statutory Provisions

Rule 33 of the Federal Rules of Criminal Procedure.

RULE 33. NEW TRIAL.

The court on motion of a defendant may grant a new trial to him if required in the interest of justice. If trial was by the court without a jury the court on motion of a defendant for a new trial may vacate the judgment if entered, take additional testimony and direct the entry of a new judgment. A motion for a new trial based on the ground of newly discovered evidence may be made only before or within two years after final judgment, but if an appeal is pending the court may grant the motion only on remand of the case. A motion for a new trial based on any other grounds shall be made within 7 days after verdict or finding of guilty or within such further time as the court may fix during the 7-day period. As amended Feb. 28, 1966, eff. July 1, 1966.

Constitutional Provision Involved

Constitution of the United States, Amendment V

No person shall . . . be deprived of life, liberty or property, without due process of law . . .

Questions Presented

1. Is newly discovered evidence of a prosecutor's promise of immunity to the Government's main witness, where the fact of that promise had been suppressed, sufficient basis

for a new trial pursuant to Rule 33 of the Federal Rules of Criminal Procedure?

2. Is a promise of immunity made by an Assistant United States Attorney attributable to the entire prosecutorial agency?

Statement of the Case

The Petitioner, John Giglio, was convicted in the United States District Court for the Eastern District of New York of two counts of violating Title 18, United States Code, Sections 2314 and 2, and one count of conspiracy in violation of Title 18, United States Code, Section 371. The indictment on which the judgment was entered was filed on October 6th, 1966 (A 5).*

The Government, in support of the Indictment, alleged that one Robert Taliento, while employed by the Manufacturers Hanover Trust Co. (A 15), on three separate occasions, cashed forged Travelers Express money orders. These checks bore the endorsement "George Cohen" (A 27), the name of a bank customer whose signature card Taliento had removed from the bank's files (A 20). Taliento, who became the Government's principal witness, alleged that he had received the checks from the Petitioner John Giglio and had turned the proceeds over to him. In return for his efforts, Taliento allegedly shared in the profits of this illegal scheme.

The above judgment of conviction was appealed by the Petitioner in the United States Court of Appeals for the

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* References to the Petitioners Appendix are introduced by the letter "A".

Second Circuit, wherein that conviction was affirmed. With respect to that decision of the Circuit Court, no Petition for a Writ of Certiorari was filed.

Subsequent to the decision of the Circuit Court, Petitioner filed a motion for a new trial pursuant to Rule 33 of the Federal Rules of Criminal Procedure based upon newly discovered evidence. The District Court denied Petitioner's Motion (A 149) and this Order was affirmed by the Circuit Court without opinion (A 156). The facts which served as the basis of the Petitioner's Rule 33 Motion related to certain promises made to the Government's main witness, the existence of which were discovered subsequent to the time when the Petitioner had filed his original Brief in the Circuit Court.

Robert Taliento, the only Government witness to inculpate the Petitioner, testified that he had received no promise of immunity from prosecution in return for the testimony which he gave. Under cross-examination, Taliento testified as follows:

> "Q. Did anybody tell you at any time that if you implicated somebody else in this case that you yourself would not be prosecuted? A. Nobody told me I wouldn't be prosecuted.
>
> Q. They told you you might not be prosecuted? A. I believe I still could be prosecuted.
>
> Q. You were told, were you not, that you could be prosecuted in this case, is that correct? A. Yes.
>
> Q. Were you told that you would not be prosecuted if you testified against somebody else? A. Not that I wouldn't be prosecuted.
>
> Q. What were you told?
>
> Mr. Golden: Objection your Honor.

The Court: The objection will be overruled.
The Witness: Can you repeat the question?

(The last question was read by the reporter.)

A. That there is still a chance I could be prosecuted." (A 43-44)

Further cross-examination produced only more certain testimony by which Taliento under oath stated that no promise of immunity had been exchanged for his cooperation with the Government. With respect to his appearance before the Grand Jury, Taliento stated that he was solely motivated by the fact that he had been subpoenaed (A 45). Again and again, Taliento clearly and unequivocally stated that his understanding of the matter was that even as he spoke from the witness stand, he could still be prosecuted (A 49-51). When asked specifically if he was told that he would not be indicted if be testified, Taliento stated that "I was told I still could be indicted" (A 51).

The net effect of this testimony left an absolute impression on the jury that the accomplice-witness' cooperation with the Government was not motivated by assurances that he would come through the ordeal unscathed. This testimony, later revealed to be false, is further highlighted by the Assistant United States Attorney's reference to it in his closing argument to the jury. In summation, the Government Attorney stated that

"He (Taliento) received no promises that he would not be indicted". (A 119)

The newly discovered evidence which the Petitioner relied upon in bringing his Motion for a new trial in the Dis-

trict Court, was disclosure of the fact that there was an express promise made to Taliento that he would not be prosecuted if he agreed to become a witness against Giglio. As previously stated, discovery of this fact was made subsequent to the time when the Petitioner had originally filed his Brief on Appeal. Petitioner's counsel was advised by Assistant United States Attorney Anthony Di Paola, who was originally assigned to prosecute the matter, that on September 20, 1966, he had expressly promised Taliento that if Taliento testified before the Grand Jury against the Petitioner, he would not be indicted. This information was affirmed by Mr. Di Paola in an affidavit which he submitted to the District Court. (A 136) Mr. Di Paola's affidavit reads in part as follows:

> "It was further agreed and understood that he, Robert Edward Taliento, would sign a waiver of immunity from prosecution before the Grand Jury, and that if he eventually testified as a witness for the Government, at the trial of the defendant, John Giglio, he would not be prosecuted." (A 137)

Assistant United States Attorney Di Paola, although originally in charge of the Giglio file, was not the Assistant United States Attorney who eventually tried the case. Nonetheless it remains that the promise of immunity did, in fact, exist; a phenomenon which the witness successfully concealed.

Summary of the Argument

Petitioner's Brief presents a significant question concerning the application of the doctrines of *Napue* v. *State of Illinois*, 360 U.S. 264 (1959) and *Brady* v. *State of Mary-*

land, 373 U.S. 83 (1963) to Federal Motions for a new trial based upon newly discovered evidence. Indeed, the instant Petition presents two important questions for this Court's consideration. Petitioner first urges that discovery of a prosecutor's promise of immunity to the Government's principal witness after that witness had perjuriously denied that such promise had been made, is sufficient basis for a new trial where the prosecutor had constructive knowledge of the promise and withheld this information from the defense.

Secondly, Petitioner argues that a promise of immunity made by an Assistant United States Attorney who participated in the case be imputed to the entire prosecutorial agency. Moreover, Petitioner respectfully submits that all members of the prosecutorial team should be deemed to have constructive knowledge of any evidence exculpatory of or otherwise favorable to the accused where one Assistant prosecutor has actual knowledge of this material.

POINT I

Petitioner was denied due process of law; discovery of the Government's failure to disclose the promise of immunity made to its principal witness was sufficient grounds for a new trial pursuant to Rule 33 of the Federal Rules of Criminal Procedure.

As developed in our statement of the case, the jury, in order to have found the Petitioner guilty of the crimes charged, must have believed the testimony of Robert Taliento. Taliento, an accomplice by his own admission, was the only Government witness to implicate the Petitioner. The fact that Taliento may have furthered his own interests by

testifying was a matter for the jury to consider in assessing the witness's credibility. 2 *Wharton's Criminal Evidence,* p 445. Where the question of credibility was so important an issue, the jury, through the testimony of the witness and the summation of the prosecutor, was led to believe that Taliento received no assurances that he would not be prosecuted in return for his testimony.

As early as 1935, this Court held in *Mooney* v. *Holohan,* 294 U.S. 103 (1935), that a prosecuting attorney was under a Constitutional duty to disclose evidence which was beneficial to the defendant's case. There it was held that a conviction obtained through the use of knowingly false and perjured testimony cannot be permitted to stand. Subsequent decisions reaffirmed the position that the use of perjured testimony known to be such by the prosecuting attorney is a denial of due process. *Pyle* v. *State of Kansas,* 317 U.S. 213 (1942), and *White* v. *Ragen,* 324 U.S. 760 (1945).

In *Napue* v. *State of Illinois,* 360 U.S. 264 (1959) this Court extended the above stated rule when presented with a factual pattern unmistakeably similar to the case at bar. In *Napue* (*supra*), as in the instant case, the prosecution's principal witness testified that he had received no promise of consideration in return for his testimony. The Assistant State's Attorney had, in fact, promised him consideration but made no attempt to correct this false testimony. (In the case at bar, not only did the prosecutor not correct the false testimony but further adopted it in his closing argument to the jury.) The *Napue* Court stated that:

> "The same result [the denial of due process first mentioned in Mooney, supra] obtains when the State,

> although not soliciting false evidence, allows it to go uncorrected when it appears." (p. 269)

The *Napue* case (*supra*) further stands for the proposition that a defendant's Constitutional right to due process is also violated when such false testimony relates to the credibility of the witness rather than the substance of that testimony. The Court states at page 269:

> "The principle that a State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, implicit in any concept of ordered liberty, does not cease to apply merely because the false testimony goes only to the credibility of the witness. The jury's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence, and it is upon such subtle factors as the possible interest of the witness in testifying falsely that a defendant's life or liberty may depend."

The decision of this Court in *Brady* v. *State of Maryland*, 373 U.S. 83 (1963), a case which has become the leading authority on the prosecutor's duty to disclose exculpatory or otherwise favorable evidence to the accused, reflects a significant extension of the rule set down in *Mooney* v. *Holohan* (*supra*). While *Mooney* spoke to the issue of a knowing suppression of exculpatory material, *Brady* stands for the proposition that good faith or bad faith of the prosecutor is not relevant. At page 87, 373 U.S., the Court stated:

> "We now hold that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution."

The effect of the principles set forth in *Brady* on a motion for a new trial based upon newly discovered evidence has been discussed in a long line of cases. Our lower Courts have held that when presented with a prosecutor's suppression of evidence the requirement of materiality must be met as with any other motion for a new trial based on newly discovered evidence. The critical question is what degree of materiality is necessary in order to overcome the defendant's burden in prosecuting a Rule 33 Motion.

To consider the effect of a prosecutor's breach of his Constitutional duty to disclose exculpatory material on a Motion for a new trial based upon newly discovered evidence one need first examine the test of materiality established for the traditional newly discovered evidence cases which do not involve prosecutorial suppression. As set forth in *United States* v. *Polisi*, 416 F. 2d 573 (2nd Cir., 1969), citing *United States* v. *Costello*, 255 F. 2d 876 (2nd Cir., 1958) cert. den'd 357 U.S. 937 (1958), the essentials for a new trial, which the defendant has the burden to show, *United States* v. *Lombardozzi*, 236 F. Supp. 957 (E.D.N.Y., 1964); aff'd 343 F. 2d 127 (2nd Cir., 1965), cert. den'd 381 U.S. 938 (1965) are that:

(1) the evidence must have been discovered since the trial;

(2) it must be material to the factual issues at trial, and not merely cumulative nor impeaching the character or credit of a witness; and

(3) it must be of such a nature that it would probably produce a different verdict in the event of a retrial.

These well established criteria regarding materiality, however, change when a case involves prosecutorial suppression. 8 A *Moore's Federal Practice* 33-27, 28.

Even prior to this Court's decision in *Brady* v. *State of Maryland* (*supra*) Judge Friendly, in *Kyle* v. *United States*, 297 F. 2d 507 (2nd Cir., 1961) recognized that the degrees of materiality vary in accordance with the type of breach committed. The Court stated that if the Government's suppression of evidence was mere negligence, one test of prejudice should be applied. Further:

> "If the hearing should lead to a finding of such negligence plus deliberate misstatements to the court and the petitioner, petitioner's burden would be less than in the case of negligence alone but more than in a case of deliberate suppression." (p. 515)

Seven years later, in *United States* v. *Keogh*, 391 F. 2d 138 (2nd Cir., 1968), Judge Friendly noted that the *Brady* decision, although eliminating the issue of a prosecutor's good faith, retained the requirement of materiality. (p. 147) The readily apparent question, however, is what degree of materiality need a defendant show in a given situation. In *Keogh*, (*supra*), the Court again recognized that the degree of materiality must be directly related to the severity of the breach of some duty which was required of the prosecutor. Another pre-*Brady* decision, *United States* v. *Consolidated Laundries Corporation*, 291 F. 2d 563 (2nd Cir., 1961), indicated that a Motion for a new trial may properly be granted where the Government has negligently suppressed material evidence. Although, as stated above, *Brady* erased the requirement that the suppression must be either deliberate or negligent, these delineations still bear heavily on the question of materiality.

In the instant Brief, it is the Petitioner's contention that the Government's failure to disclose the Assistant United States Attorney's promise of immunity to its main witness after the witness had perjuriously denied that it had been made, was a breach of duty which reached Constitutional proportions. It is further submitted that this suppression must fall within the category of either gross negligence or deliberate withholding of evidence. Two cases decided by the Second Circuit Court of Appeals, which speak to this issue, appeared to present a clear application of standards with respect to a new trial where prosecutorial misconduct was involved.

In *United States* v. *Miller*, 411 F. 2d 825 (2nd Cir., 1969), the Court reversed a District Court order denying a new trial where the Government had failed to produce a memorandum which could have been considered 3500 material. The previously established standards as to the materiality of the newly discovered evidence, i.e., the evidence must be material to the factual issues at the trial and not merely cumulative nor impeaching the character or credit of a witness and that the evidence must be of such a nature that it would probably produce a different verdict in the event of a new trial are, as the Court stated, reduced where the prosecution negligently fails to make evidence available to the defense. The Court then went on to state that where the Government's duty of disclosure had not been discharged

> "... a motion for a new trial must be granted if there is a significant possibility that the undisclosed evidence might have led to an acquittal or a hung jury ...".

It is interesting to note that the Court felt that such possibility existed even where the "defense already possessed an abundance of impeaching material" as to the credibility of the Government's principal witness. In *Miller* (*supra*), Judge Friendly again stated that the

> "... negligence of the prosecutor in failing to make evidence available to the defense reduces the standard of materiality needed to require the granting of a new trial below the formulations applicable where no prosecutorial misconduct exists."[1]

In *United States* v. *Polisi*, 416 F. 2d 573 (2nd Cir., 1969), which involved the Government's failure to reveal a conflicting statement made by the defendant's accomplice, the Court stated that the general rules with respect to the granting of a new trial, i.e. the generally held essentials set forth in *Costello*, (*supra*), do not apply

> "... where the prosecutor has suppressed evidence exculpatory of or otherwise favorable to the accused." (p. 577)

The Court further states that this rule is applicable even where the issue involves only the credibility of a witness and not the facts at issue citing *Napue* v. *State of Illinois*, (*supra*). The *Polisi* Court goes on to say that

> "A new trial is required where the prosecutor's failure to disclose was a considered decision for the sake of obstruction, or where the value of the evi-

[1] Judge Friendly's recognition of a reduced standard of materiality was not without precedent. In *Harrison* v. *U. S.*, 24 F. 2d 82 (7th Cir., 1928) the Court, when faced with newly discovered evidence of perjured testimony, held that a new trial should be granted where the jury *might* have reached a different conclusion.

> dence to the accused could not have escaped him." (p. 577)

The Court, by applying the principles set forth in *Brady*, (*supra*), reached the conclusion that in view of the prosecutorial suppression, the Appellant would be entitled to a new trial "even though Cordero's testimony 'probably' would not have produced a different verdict . . . and even though the testimony's primary effect would only be to impeach the credibility of the accomplices." Furthermore, the Court stated that "the same conclusion would result even assuming that, at the time of the trial, the Government could well have legitimately concluded that Cordero's testimoney was merely cumulative". (p. 578) The importance of *Brady*, the Court stated, is that such violations are measured

> ". . . by the effect of the suppression upon defendant's preparation for trial rather than its effect upon the jury's verdict".

The impact of *Miller* and *Polisi* was again recognized by the Second Circuit in *United States* v. *Silverman*, 430 F. 2d 106 (2nd Cir., 1970) and in *United States* v. *Bonanno*, 430 F. 2d 1060 (2nd Cir., 1970). These two cases treat as well established, the rule that the standards of materiality are substantially reduced where either perjured testimony or prosecutorial misconduct is involved. Nevertheless, in the case at bar, where there is evidence of both perjury and prosecutorial misconduct wholly substantiated by a sworn affidavit of an Assistant United States Attorney, the Circuit Court without opinion determined that the Trial Court did not abuse its discretion in denying Petitioners Motion. As Judge Friendly recognized in *Miller*, "[the withheld mate-

rial] could have been the 'capstone' of the defense attack on the crucial Government witness". At best the instant case is one where the prosecutor has failed to come completely clean. The breach of that duty, it is respectfully submitted, requires that a new trial be ordered.

POINT II

The Assistant United States Attorney who actually tried the case must be charged with the knowledge that a promise of immunity had been made to the principal witness.

In the case at bar, the promise made to the Government's principal witness that he would not be indicted in consideration for his testimony, was made by Assistant United States Attorney Anthony Di Paola within the scope of his apparent authority and as part of the "prosecution team". The issue presented to this Court is whether this promise and the knowledge that it did, in fact, exist, is to be imputed to the entire prosecutorial agency. Although this Court has never directly spoken to the issue, various decisions of our lower Courts have made it clear that a prosecutor cannot be held unaccountable for facts which are within the actual knowledge of another member of the prosecutorial staff.

In an often quoted decision *Application of Kapatos*, 208 F. Supp. 883 (S.D.N.Y., 1962), Judge Palmieri stated:

> ". . . I do not think that an accused's right as defined by Napue should depend on the fortuitious circumstance that the district attorney who conducts the investigation also conducts the prosecution, . . ."

In the instant case, there is no issue as to whether Taliento was a central witness; he was, in fact, the only witness to implicate the Petitioner, Giglio. Nor is there a question under *Napue*, (*supra*), of whether his false testimony was significant. In *Hawkins* v. *United States*, 324 F. 2d 873 (5th Cir., 1963), the Court was faced with a similar problem. An Assistant United States Attorney who allegedly made promises of leniency to Government witnesses in consideration for their testimony, was not the Assistant who later tried the case at the trial in issue. The Circuit Court found that

> "At the time these witnesses so testified, the government must be charged with knowledge that their testimony was false."

There are several other decisions, both on the Circuit and District Court levels which support the position taken by the Court in *Kapatos* and *Hawkins* (*supra*). See *Barbee* v. *Maryland*, 331 F. 2d 842 (4th Cir., 1964); *Nash* v. *Purdy*, 283 F. Supp. 837 (S.D. Fla., 1968); *Walker* v. *Bishop*, 295 F. Supp. 767 (E.D. Ark., 1967).

The American Bar Association, in its Project on Minimum Standards for Criminal Justice; Standards Relating to Discovery and Procedure Before Trial, recommended with regard to disclosure to the accused that:

> "The prosecuting attorney's obligations under this section extend to material and information in the possession or control of members of his staff and of any others who have participated in the investigation or evaluation of the case and who either regularly report or with reference to the particular case have reported to his office." 2.1(d)

The obvious necessity of such a mandate is clear. *Brady* v. *State of Maryland* and the related decisions of this Court which have sought to safeguard a defendant's constitutional rights, lose all meaning if the prosecutor representing the Government at trial can rely upon the fact that he did not have actual knowledge of the *Brady* material.

In conclusion it need only be said that the affirmance of the order denying Petitioner's Motion for a new trial, in view of the above cited authority, attacks the conscience of American Criminal justice. No question exists as to whether the promise of immunity was made, nor can there be any dispute as to whether the witness perjured himself regarding this promise. To hold that the United States Attorney and the Trial Assistant are not responsible for these facts, offends logic. The totality of the above circumstances so clearly violate fundamental fairness in a criminal prosecution, as defined by *Napue* and *Brady*, that to sustain such prosecutorial conduct would distort the very meaning of due process.

CONCLUSION

For the reasons stated it is respectfully submitted that the judgment of the Court of Appeals for the Second Circuit should be reversed and the matter remanded to the District Court for a new trial.

Respectfully submitted,

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UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES

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In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 892

JOHN GIGLIO, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES

OPINION BELOW

The court of appeals affirmed without opinion (A. 156-157).

JURISDICTION

The judgment of the court of appeals was entered on September 23, 1970. The petition for a writ of certiorari was filed on October 23, 1970, and granted on March 1, 1971. The jurisdiction of this Court rests upon 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether in the circumstances of this case evidence of an alleged promise of immunity made to a government witness requires the granting of a new trial.

STATEMENT

After a jury trial in the United States District Court for the Eastern District of New York, petitioner was convicted of transporting forged money orders in interstate commerce in violation of 18 U.S.C. 2314 (counts one and two) and of conspiracy in connection therewith in violation of 18 U.S.C. 371 (count four) (A. 5-8).[1] He was sentenced to five years' imprisonment on each count with the sentences on counts two and four to run concurrently, subject to the parole eligibility provisions of 18 U.S.C. 4208(a). Petitioner was given a five-year consecutive sentence on count two, but that sentence was suspended (A. 154).

A. The Trial

1. The evidence adduced by the government at trial (the defense submitted no evidence) showed that petitioner's scheme began in June 1966. The co-conspirator, who was not indicted, was Robert Taliento, who at that time was a nineteen-year-old teller in a Brooklyn bank. The plan was for Taliento to cash stolen Travellers' Express money orders given

[1] At the close of the government's case, the trial court granted the defense motion to dismiss count three (A. 6; Tr. 211).

to him by petitioner (A. 18-21, 23, 71; Tr. 180-182).[2] These money orders, which had moved in interstate commerce, were endorsed with the forged signature of a regular customer at the bank (A. 13, 19-20).

Taliento testified as a government witness that, on the evening of June 26, 1966, petitioner had given him $2,300 in forged money orders and that he cashed them at his bank the following day. That night he gave the money to petitioner and received $500 in return (A. 23-26). That same evening, petitioner gave Taliento additional forged money orders to cash (A. 27-28) and Taliento cashed them the next day (A. 30). That evening, June 28, 1966, he delivered the proceeds ($2,100) to petitioner and again received $500 (A. 31-33). Taliento thereafter met with petitioner on the evening of July 4. When petitioner said "he had a few more checks to cash," Taliento told him that he should come to the bank (A. 33). The following morning, petitioner brought the money orders—worth $3,000—to the bank and Taliento cashed them (A. 33-34).

Later that day bank authorities became aware of the earlier unlawful transactions and confronted Taliento, who divulged petitioner's role in the scheme and admitted his own complicity (see A. 65-68, 69, 100; Tr. 29, 192-193). The F.B.I. was called and that same evening obtained Taliento's cooperation in apprehending petitioner (A. 35;[3] Tr. 185-186). At

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[2] "A." refers to the Appendix and "Tr." to the trial transcript which is on file with the Clerk. We are also lodging the grand jury transcript.

[3] The appendix contains an obvious misprint in referring to the F.B.I. meeting with Taliento as having occurred on July 5, 1968, rather than July 5, 1966.

the agents' request, Taliento telephoned petitioner and arranged that their meeting scheduled for 10:00 that evening be rescheduled for 11:00 p.m. (Tr. 185-186). This meeting was watched by federal authorities, who interrupted it to arrest petitioner. He had $550 wrapped in a rubber band on his person (Tr. 188, 198) but denied that this money belonged to him (Tr. 199).

2. At trial, Taliento was closely cross-examined on a variety of subjects,[4] including the question whether any promises had been made to him by the government in exchange for his testimony (A. 43-52). When confronted with his grand jury testimony that he wanted to help himself (Grand Jury Tr. 26), Taliento retracted his earlier statement that he testified before the grand jury solely because he was subpoenaed (A. 45-46). He denied that any statements he had made to bank officials or to the F.B.I. in early July 1966 were in exchange for a promise of leniency (A. 48, 101). There was, he stated, no discussion along such lines on those occasions (A. 48).

Taliento further testified on cross-examination that, at the time of trial, he had not been charged with any crime, and that about a week prior to trial he had been at the United States Attorney's office and that the Assistant United States Attorney who tried the case (Carl Golden), an F.B.I. agent and his own

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[4] This included repeated attempts to impeach his credibility by pointing to certain differences between his trial testimony and earlier statements he had made to bank authorities, the F.B.I. and the grand jury (see *e.g.*, A. 88-91, 67-69, 71-72, 85-86).

attorney told him that if he did not testify at trial he could be indicted. He stated that he was not told that if he did testify he would not be prosecuted, and believed he still could be tried (A. 43-44, 51-52).

In closing argument, defense counsel emphasized to the jury how much the government's case rested upon Taliento's testimony (*e.g.*, Tr. 220, 234), and he devoted the major portion of his summation to an attack on Taliento's credibility, strenuously urging that Taliento was not worthy of belief (*e.g.*, Tr. 221-223, 227, 231). Counsel asserted, *inter alia*, that Taliento was simply testifying "to help himself"; that he was a "liar"; and at one point characterized him as a "cornered rat" who was "looking for any way to hang anybody to save" himself (Tr. 232-233; see also A. 133-135). In his summation, government counsel advised the jury that Taliento had "received no promises that he would not be indicted" (Tr. 255-256).

In its instructions the trial court stated that the members of the jury were "the sole judges of the credibility of the testimony of all witnesses and the weight and effect of all the evidence" (Tr. 269; see also Tr. 265-272). It was further pointed out that Taliento was by his own testimony an accomplice; the court advised that, while such status did not mean that Taliento could not be believed, it did mean that his testimony had to be examined and weighed "with great caution and care * * *" (Tr. 282). The jury returned a guilty verdict in August 1968 and the court of appeals affirmed in May 1969 (A. 123-124).

B. The Motion for a New Trial

1. In July 1969—some eleven months after the conclusion of the trial—petitioner made a motion for a new trial on account of newly discovered evidence. The motion was supported by an affidavit of counsel to the effect that after the briefs had been filed in the court of appeals, he was advised by Anthony Di Paola, an Assistant United States Attorney for the Eastern District of New York, that on September 20, 1966 (almost two years before the trial), Di Paola had expressly promised Taliento that he would not be indicted if he testified before the grand jury against petitioner. The thrust of counsel's motion was that the government had the obligation to advise the defense of this fact at trial, and its failure to have done so required a new trial (A. 128, see A. 123-128).

The government submitted affidavits in response. Mr. Di Paola, who had handled this case before the grand jury in September 1966, stated in his affidavit that sometime after the arraignment of petitioner and Taliento on July 6, 1966, he had conferred with Taliento and the latter's counsel, that it had been agreed at this conference that if Taliento would testify before the grand jury as a government witness he would not be indicted, and that it was further agreed that if Taliento eventually testified as a government witness at trial he would not be prosecuted, but that if he did not testify he would be prosecuted (A. 136-137).

Mr. Golden, the Assistant who subsequently took over the case and actually tried it, also submitted an affidavit on behalf of the government (A. 138-141).

He stated that on August 6, 1968, the day after he was assigned petitioner's case and three days before the trial began, he discussed the case with Mr. Di Paola who advised him that Taliento "had not been granted immunity" but had not been indicted because he "was very young at the time of the alleged occurrence and obviously had been overreached" by petitioner (A. 139). Mr. Golden could not reach Taliento that day, and again discussed the matter with Mr. Di Paola. The latter stated he thought Taliento would be cooperative but, if he was not, he was still subject to indictment (A. 140).

On August 7, Golden was able to reach Taliento and, on that date, had an interview with him and his father. When confronted with the statements he had given at the bank on July 5, 1966, Taliento "claimed he had a loss of memory." (A. 140). Mr. Golden reminded Taliento that he had not been granted immunity and arranged a further conference later that afternoon which was attended by Taliento, the latter's father and the United States Attorney, Joseph Hoey. Both Messrs. Golden and Hoey stated in their affidavits that at this meeting Mr. Hoey told Taliento that if he refused to testify, he would be indicted (A. 140-141).[5] Taliento and his father were advised to confer with the attorney who had represented Taliento at the time of his grand jury appearance in September 1966 (A. 141). Mr. Hoey notified that attorney and explained the situation to him (A. 143).

[5] Mr. Hoey's affidavit stated that Taliento was informed at this time that he "could and should have been indicted as a co-defendant with GIGLIO" (A. 143).

Later that afternoon, the Talientos, accompanied by the attorney, returned and met with Mr. Hoey (A. 141). They were advised that Taliento had not been granted immunity and that if he refused to testify he would be indicted (A. 141). At that time, Taliento's counsel made no claim that his client had ever "received immunity or was made any promises" (A. 143-144). According to Mr. Hoey, at this meeting "[n]o assurances were given to [counsel] or to the Talientos except that they would have to rely on the good judgment and conscience of the Government" (A. 144). The next day, after conferring with counsel, Taliento agreed to testify as a government witness (A. 141).

2. The district court denied the motion for a new trial (A. 149-152). It found that the testimony of Taliento was elicited, "not under a grant of immunity from the prosecution, but after consultation with Mr. Joseph Hoey, United States Attorney—the only person who could authorize the grant of immunity—and advice that he (Taliento) could and would be prosecuted if he did not testify" (A. 151-152). The court pointed out that the relevant facts were all before the jury—namely, that Taliento was an accomplice who had not to the date of trial been indicted and that Taliento still believed he could be prosecuted—and that his personal stake in the case was vigorously commented upon by petitioner's trial counsel. The court concluded that "[n]othing was left unsaid" and that in these circumstances it was "inconceivable [that] the result would or should be changed" (A. 152).

The court of appeals affirmed without opinion (A. 156-157).

SUMMARY OF ARGUMENT

Petitioner's basic assertion is that Taliento lied when he testified that he had received no promise of immunity from the government in exchange for his testimony and that accordingly he is entitled to a new trial. The fallacy of this argument is that it rests solely on what an Assistant United States Attorney assertedly advised Taliento in 1966, some two years before trial, and wholly overlooks the critical events occurring just prior to trial. These later events —the meetings with the United States Attorney and the Assistant United States Attorney who actually tried the case—make it manifest that neither Taliento nor his attorney was under any impression that Taliento had any immunity. On the contrary, Mr. Hoey, the United States Attorney, made explicit that if Taliento testified as a government witness he "would have to rely on the good judgment and conscience of the government" (A. 143-144). Neither Taliento nor his counsel took exception to that statement. It is clear therefore that Taliento testified honestly when he said on cross-examination that there was "still a chance" he could be prosecuted (A. 44). By the same token, neither the United States Attorney nor Mr. Golden, the Assistant who tried the case, was proceeding upon any other understanding; there was thus neither perjury nor prosecutorial suppression of evidence.

The precise question in this case therefore reduces itself to whether, taking Mr. Di Paola's statement on its face, there is enough here to require a new trial. Under traditional standards there are no sufficient grounds for a new trial because the evidence would not likely have produced an acquittal if it had been admitted at trial.

The substantive evidence in the case was unaffected by the 1966 promise. Particularly critical were Taliento's confessions directly implicating petitioner, which were made before the alleged promise of immunity and thus were in no way affected by it. Moreover, few would contend that the jury, which was made fully aware of Taliento's involvement in the scheme and the fact that he had nevertheless not been indicted, would have been influenced by the admission of the 1966 promise. There remains no inconsistency between the jury's belief that Taliento and Assistant United States Attorney Golden truthfully represented that no promise of immunity had been made—which was in fact the truth in light of the pretrial events—and a simultaneous belief that the government would weigh any helpful testimony heavily in its subsequent decision whether or not to prosecute Taliento.

ARGUMENT

Petitioner Is Not Entitled To A New Trial On The Ground That There Was An Undisclosed Promise Of Immunity.

A. *Taliento's asserted belief that he could be prosecuted was not misrepresented.*

The core of petitioner's argument is that he is entitled to a new trial because the government failed to disclose that its key witness had "perjuriously denied" (Pet. Br. 12) that he had received a promise of immunity for his testimony. But the crucial premise of this contention is not supported by the facts of this case. The assertion that immunity had been promised rests entirely on Mr. Di Paola's affidavit concerning his memory of his conversation with Taliento and the latter's attorney in 1966; it wholly overlooks, however, the more critical events occurring during the week before the trial, some two years later. When these 1968 events are examined it is clear, we submit, that Taliento did not falsify the facts either knowingly or even inadvertently when he testified that he had not been promised immunity from indictment or prosecution by the government.

It is undenied that the assistant who tried the case, Mr. Golden, was not aware of any 1966 promise—a promise which, it should be noted, was not in writing or otherwise reflected in the government files. Indeed, Mr. Golden's affidavit unequivocally states that shortly before the 1968 trial, Mr. Di Paola had told him that Taliento had not been given immunity, and that the reason he had not been indicted together with Giglio was because of his youth and the feeling that

he had been "overreached" by petitioner (A. 139). The meetings which took place shortly thereafter reflect the correctness of the understanding of government trial counsel—as well as Taliento—that there was no assurance of immunity.

When Taliento indicated shortly before trial that he did not want to testify, due to an alleged loss of memory (A. 140), the United States Attorney, Joseph Hoey, in a conference with Carl Golden, Taliento, and the latter's counsel, told Taliento that he could still be indicted (A. 140-141). Neither Taliento nor his attorney made any mention of any earlier promise of immunity—this despite the fact that Mr. Hoey's affidavit indicates that he gave no assurances that Taliento would not be prosecuted even if he did testify but told him he "would have to rely on the good judgment and conscience of the Government" (A. 143-144). In short, whatever may have occurred in the 1966 conversation with Mr. Di Paola, these 1968 conferences erased any significance the earlier promise might have had. They made manifest that neither Taliento nor the lawyer who represented him was of the opinion at the time of the trial that Taliento was immune from prosecution. While Taliento and his lawyer may well have believed that the actual chances that Taliento would have to stand trial were slim if he cooperated, this was another matter altogether, and fully consistent with the statements at trial.

Against this background Taliento spoke honestly when he testified that there was "still a chance" he could be prosecuted, and that he "still could be in-

dicted" (A. 44, 50). And so did Mr. Golden when he stated to the jury in closing argument that in view of the events of the past week Taliento knew he could be indicted and "received no promises that he would not be indicted" (A. 119). As the district court pointed out, the United States Attorney—the officer with the dispositive authority in this regard—had made no promise of immunity and no complaint was made by Taliento or his counsel that the government was defaulting upon any previous promise.

No other conclusion makes sense in light of these pretrial events. Indeed, one may inquire why Taliento found it necessary to feign a memory loss if he, or his counsel, believed that the 1966 conversation with Mr. Di Paola represented a government promise of immunity.* In short, viewing this record in its entirety, it is our submission that the questions which petitioner advances are not actually posed: (1) whether knowledge of an informal promise of immunity made by one Assistant United States Attorney must be imputed to another, and (2) if so, whether uncontradicted false testimony by a crucial witness that no such promise was made establishes such misconduct by the government that a new trial would be warranted.

We emphasize that if, in fact, an Assistant United States Attorney, to the understanding of all parties,

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* It is true that this memory lapse was coupled with the statement of his father that "I would rather have my boy alive than have him testify and be killed" (A. 140). But his father was unable to pinpoint the basis of this fear (A. 140); "it was an indefinite fear—nothing else" (A. 143).

gives a firm promise of immunity, the government would honor that promise, whether or not legally obligated to do so. Our position in the case at hand is simply that no binding promise was made and that Taliento therefore did not misrepresent the situation in his testimony at the trial. Thus, there could not have been any prosecutorial misconduct in allowing him to testify as he did.

We have no reason to doubt, however, that if Mr. DiPaola in fact made a promise to Taliento in 1966,[7] that promise was not known to petitioner or his counsel at the trial. Thus, apart from any question of possible prosecutorial misconduct, there remains the question whether the subsequent revelation of such a promise would otherwise warrant a new trial on the basis of newly discovered evidence under F.R.Crim. P. 33. Accordingly, in the next section we discuss the applicable new trial standards, concluding that such relief would be appropriate only if Mr. DiPaola's statement would likely have led to acquittal if admitted at trial, something that would plainly not have occurred in the circumstances of this case.

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[7] We assume *arguendo* in this brief that Mr. DiPaola's 1969 affidavit (A. 136-137) accurately reflects what he told Taliento in 1966. We note, however, that there is other evidence suggesting that Mr. DiPaola's recollection may not be completely accurate. Mr. Golden's recollection of what Mr. DiPaola told him about the matter in 1968 differs substantially (see A. 139-140). Moreover, at the outset of Taliento's testimony before the grand jury on September 20, 1966, Mr. DiPaola advised him of his Fifth Amendment privilege of silence, pointing out that if he testified he "could become a prospective defendant" in a subsequent criminal case (see Grand Jury Transcript, pp. 13-15). Thus, even if

B. The 1966 promise—assuming there was one—was not sufficiently material to call for a new trial.

We begin with an outline of the criteria that this Court and the courts of appeals have developed for evaluating new trial claims based on newly discovered evidence under the various types of circumstances that may arise. The categories tend to overlap and no exhaustive analysis is intended. Our purpose is simply to set forth the basic considerations in order to determine the principles that should govern here.

1. A new trial is clearly in order in cases of blatant and deliberate use by the state of false substantive evidence (*e.g.*, *Mooney* v. *Holohan*, 294 U.S. 103, 112) or in cases where a principal state witness testifies falsely, with the knowledge of the prosecutor and no correction by him. (*e.g.*, *Napue* v. *Illinois*, 360 U.S. 264). The focus of these and related decisions in large measure is upon prosecutorial misconduct. Accordingly, even where no perjured testimony is actually introduced purposeful suppression of highly relevant evidence would justify a new trial. The greater the showing of prosecutorial misconduct the less need be the showing of materiality of the suppressed evidence. See *United States* v. *Bonnano*, 430 F. 2d 1060, 1063 (C.A. 2), and cases there cited. This is so because " '[t]he administration of justice must not only be above reproach, it must also be beyond the suspicion of reproach.' " *Kyle* v. *United*

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the failure to reveal such a promise under all the circumstances were regarded as prosecutorial misconduct, a further hearing would be required to determine if such a promise was actually made in 1966.

States, 297 F. 2d 507, 514 (C.A. 2). And where the prosecutor lends himself to perjury "[t]he court must combat this threat to its own dignity and to the dignity of the criminal system or risk the possibility that the community will lose faith in the entire criminal process." Note, *The Prosecutor's Constitutional Duty to Reveal Evidence to the Defendant*, 74 Yale L. J. 136, 138 (1964). The instant case is not encompassed by this rationale, since there was neither perjurious testimony nor purposeful suppression of evidence by the prosecutor.

There is a related category of cases in which a new trial would be in order "irrespective of the good faith or bad faith of the prosecution" because, despite a general defense request, highly relevant material has not been disclosed. *Brady* v. *Maryland*, 373 U.S. 83, 87, is the exemplar. That was a murder case, where a companion of the defendant had made a pretrial statement admitting the actual slaying which had not been disclosed to the defense. In that context, this Court held (373 U.S. at 87) that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." The *Brady* principle also does not control here, since—we shall elaborate—no "material" evidence was suppressed by the government knowingly or otherwise and it cannot be said that the failure to disclose Di Paola's promise impaired the defendant's ability to prepare for trial, see *United States* v. *Polisi*, 416 F. 2d 573, 577 (C.A. 2). Moreover, there

was here no general request by the defense for such evidence.

This case is not comparable to one where a material promise made by one Assistant United States Attorney was contained in writing in the government's file although apparently not known to the prosecutor who actually tried the case.[8] There is no contention here that Di Paola's promise was even reduced to writing, much less that it was contained in the government file.

The most that can be said in this case is that at a time long before trial an Assistant United States Attorney who had nothing to do with the actual trial itself apparently made a representation which, as a consequence of later superseding events, had no ultimate significance. In such circumstances, it is proper to conclude as did Judge Friendly in *United States* v. *Keogh*, 391 F.2d 138, 148 (C.A. 2) (albeit in a somewhat different context) that "the problems of the courts and the wider interests of society unite to require a substantially higher probability that disclosure of the defense would have altered the result. To invalidate a conviction in such cases because a comb-

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[8] See *Hawkins* v. *United States*, 324 F. 2d 873 (C.A. 5), where there was a written representation in the file to the effect that the cooperation of two self-confessed accomplices in testifying against the defendant would be considered by the trial court. The Fifth Circuit found that when these key witnesses testified that no promises had been made for their testimony the government had to be charged with knowledge that their testimony was false even though the prosecutor who tried the case had not made the promise. See 324 F. 2d at 878.

ing of the prosecutors' files after the trial has disclosed evidence possibly useful to the defense but not likely to have changed the verdict would create unbearable burdens and uncertainties."

2. The applicable principle, therefore, is the traditional one requiring a new trial only if the newly discovered evidence can be shown to be "material and of some substantial use to the defendant." *United States* v. *Tomaiolo*, 378 F. 2d 26, 28 (C.A. 2). Although this Court has not ruled on standards of materiality "and the degree of prejudice which must be shown to make necessary a new trial." *Giles* v. *Maryland*, 386 U.S. 66, 74 (opinion of Mr. Justice Brennan), the rule applied in most circuits is that the evidence must be of such quality as would likely have produced an acquittal if it had been admitted at trial.[9] That is, we submit, the appropriate rule.

In this case, the trial judge found that it was "inconceivable [that] the result would or should be changed" by the new evidence (A. 152), and this ruling was affirmed by the court below without an opinion. The trial judge's conclusion as to the facts should not be upset unless such findings were "wholly

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[9] *E.g.*, *United States* v. *Alexander*, 430 F. 2d 904, 906 (C.A.D.C.); *United States* v. *Cousins*, 429 F. 2d 1271, 1272 (C.A. 9), certiorari denied, 400 U.S. 904; *United States* v. *McWilliams*, 421 F. 2d 1083, 1085 (C.A. 8), certiorari denied, 397 U.S. 1070; *United States* v. *Perea*, 418 F. 2d 65, 69 (C.A. 10), certiorari denied, 397 U.S. 945; *United States* v. *Luxenberg*, 374 F. 2d 241, 251 (C.A. 6); *United States* v. *Faustin*, 371 F. 2d 820, 821 (C.A. 2), certiorari denied, 387 U.S. 935; *United States* v. *De Marie*, 261 F. 2d 477, 479 (C.A. 7).

unsupported by evidence." *United States* v. *Johnson*, 327 U.S. 106, 111; *United States ex rel. Fein* v. *Deegan*, 410 F. 2d 13, 17 (C.A. 2), certiorari denied, 395 U.S. 935. Petitioner can make no such showing here.

First, there was evidence at petitioner's trial to corroborate Taliento's testimony. There is no question that Taliento had an "appointment" with petitioner on the evening of July 5, 1966, before he agreed to help the F.B.I. (Tr. 185-186) and that when he met with petitioner that night, petitioner had a roll of money amounting to slightly less than Taliento's purported share ~~($500)~~ of the take on the money orders fraudulently cashed that day (Tr. 198-199). More significantly, Taliento had made two statements—one to the bank on July 5, 1966 (Tr. 192-193) and one to the F.B.I. on July 7, 1966 (Tr. 203-204)—which implicated petitioner and fully detailed the scheme. Since the first statement was made before the F.B.I. was even called, it cannot be claimed that Taliento's implication of petitioner was in any way based upon any promises made by any government agent. Indeed, Mr. Di Paola apparently made his promise, such as it was, sometime in September 1966, several months after Taliento's full confession to the F.B.I. in July. The force of these earlier statements directly implicating petitioner in the fraudulent scheme is therefore not affected by evidence of a subsequent promise of immunity. Furthermore, it cannot seriously be contended that the jury would have been influenced in its outcome if it had known of Di Paola's promise. It was directly brought out at trial that Taliento was not indicted and that he testified before the grand

jury basically to serve his own interests. Moreover, in closing argument defense counsel repeatedly hammered home the fact that Taliento had much to gain by placing the blame on petitioner. In this setting the jury could not be "so naive" (cf. *United States* v. *Davila*, 428 F. 2d 465, 467 (C.A. 9)) as to believe that Taliento—although honest in his testimony that he had not been promised immunity—did not expect the government to take his testimony into account in deciding whether to proceed further against him.

Di Paola's statement, in sum, did not contain any information that the defense could have put to any significant use and the motion for a new trial was properly denied.

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment of the court of appeals be affirmed.

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GIGLIO *v.* UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 70–29. Argued October 12, 1971—Decided February 24, 1972

Petitioner filed a motion for a new trial on the basis of newly discovered evidence contending that the Government failed to disclose an alleged promise of leniency made to its key witness in return for his testimony. At a hearing on this motion, the Assistant United States Attorney who presented the case to the grand jury admitted that he promised the witness that he would not be prosecuted if he testified before the grand jury and at trial. The Assistant who tried the case was unaware of the promise. *Held:* Neither the Assistant's lack of authority nor his failure to inform his superiors and associates is controlling, and the prosecution's duty to present all material evidence to the jury was not fulfilled and constitutes a violation of due process requiring a new trial. Pp. 153–155.

Reversed and remanded.

BURGER, C. J., delivered the opinion of the Court, in which all members joined, except POWELL and REHNQUIST, JJ., who took no part in the consideration or decision of the case.

James M. La Rossa argued the cause and filed a brief for petitioner.

Harry R. Sachse argued the cause for the United States. On the brief were *Solicitor General Griswold, Assistant Attorney General Wilson, Jerome M. Feit,* and *Beatrice Rosenberg.*

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

Petitioner was convicted of passing forged money orders and sentenced to five years' imprisonment. While appeal was pending in the Court of Appeals, defense counsel discovered new evidence indicating that the Government

had failed to disclose an alleged promise made to its key witness that he would not be prosecuted if he testified for the Government. We granted certiorari to determine whether the evidence not disclosed was such as to require a new trial under the due process criteria of *Napue* v. *Illinois*, 360 U. S. 264 (1959), and *Brady* v. *Maryland*, 373 U. S. 83 (1963).

The controversy in this case centers around the testimony of Robert Taliento, petitioner's alleged coconspirator in the offense and the only witness linking petitioner with the crime. The Government's evidence at trial showed that in June 1966 officials at the Manufacturers Hanover Trust Co. discovered that Taliento, as teller at the bank, had cashed several forged money orders. Upon questioning by FBI agents, he confessed supplying petitioner with one of the bank's customer signature cards used by Giglio to forge $2,300 in money orders; Taliento then processed these money orders through the regular channels of the bank. Taliento related this story to the grand jury and petitioner was indicted; thereafter, he was named as a coconspirator with petitioner but was not indicted.

Trial commenced two years after indictment. Taliento testified, identifying petitioner as the instigator of the scheme. Defense counsel vigorously cross-examined, seeking to discredit his testimony by revealing possible agreements or arrangements for prosecutorial leniency:

> "[Counsel.] Did anybody tell you at any time that if you implicated somebody else in this case that you yourself would not be prosecuted?
>
> "[Taliento.] Nobody told me I wouldn't be prosecuted.
>
> "Q. They told you you might not be prosecuted?
>
> "A. I believe I still could be prosecuted.

"Q. Were you ever arrested in this case or charged with anything in connection with these money orders that you testified to?

"A. Not at that particular time.

"Q. To this date, have you been charged with any crime?

"A. Not that I know of, unless they are still going to prosecute."

In summation, the Government attorney stated, "[Taliento] received no promises that he would not be indicted."

The issue now before the Court arose on petitioner's motion for new trial based on newly discovered evidence. An affidavit filed by the Government as part of its opposition to a new trial confirms petitioner's claim that a promise was made to Taliento by one assistant, DiPaola,[1] that if he testified before the grand jury and at trial he would not be prosecuted.[2] DiPaola presented the Government's case to the grand jury but did not try the case in the District Court, and Golden, the assistant who took over the case for trial, filed an affidavit stating that DiPaola assured him before the trial that no promises of immunity had been made to Taliento.[3] The United

[1] During oral argument in this Court it was stated that DiPaola was on the staff of the United States Attorney when he made the affidavit in 1969 and remained on that staff until recently.

[2] DiPaola's affidavit reads, in part, as follows:

"It was agreed that if ROBERT EDWARD TALIENTO would testify before the Grand Jury as a witness for the Government, . . . he would not be . . . indicted. . . . It was further agreed and understood that he, ROBERT EDWARD TALIENTO, would sign a Waiver of Immunity from prosecution before the Grand Jury, and that if he eventually testified as a witness for the Government at the trial of the defendant, JOHN GIGLIO, he would not be prosecuted."

[3] Golden's affidavit reads, in part, as follows:

"Mr. DiPaola . . . advised that Mr. Taliento had not been granted immunity but that he had not indicted him because Robert Taliento was very young at the time of the alleged occurrence and obviously had been overreached by the defendant Giglio."

States Attorney, Hoey, filed an affidavit stating that he had personally consulted with Taliento and his attorney shortly before trial to emphasize that Taliento would definitely be prosecuted if he did not testify and that if he did testify he would be obliged to rely on the "good judgment and conscience of the Government" as to whether he would be prosecuted.[4]

The District Court did not undertake to resolve the apparent conflict between the two Assistant United States Attorneys, DiPaola and Golden, but proceeded on the theory that even if a promise had been made by DiPaola it was not authorized and its disclosure to the jury would not have affected its verdict. We need not concern ourselves with the differing versions of the events as described by the two assistants in their affidavits. The heart of the matter is that one Assistant United States Attorney—the first one who dealt with Taliento—now states that he promised Taliento that he would not be prosecuted if he cooperated with the Government.

As long ago as *Mooney* v. *Holohan*, 294 U. S. 103, 112 (1935), this Court made clear that deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with "rudimentary demands of justice." This was reaffirmed in *Pyle* v. *Kansas*, 317 U. S. 213 (1942). In *Napue* v. *Illinois*, 360 U. S. 264 (1959), we said, "[t]he same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears." *Id.*, at 269. Thereafter *Brady* v. *Maryland*, 373 U. S., at 87, held that suppression of material evidence justifies a new trial "irrespective of the good faith or bad faith of the prosecution." See Ameri-

[4] The Hoey affidavit, standing alone, contains at least an implication that the Government would reward the cooperation of the witness, and hence tends to confirm rather than refute the existence of some understanding for leniency.

can Bar Association, Project on Standards for Criminal Justice, Prosecution Function and the Defense Function § 3.11 (a). When the "reliability of a given witness may well be determinative of guilt or innocence," nondisclosure of evidence affecting credibility falls within this general rule. *Napue, supra,* at 269. We do not, however, automatically require a new trial whenever "a combing of the prosecutors' files after the trial has disclosed evidence possibly useful to the defense but not likely to have changed the verdict . . . ." *United States* v. *Keogh,* 391 F. 2d 138, 148 (CA2 1968). A finding of materiality of the evidence is required under *Brady, supra,* at 87. A new trial is required if "the false testimony could . . . in any reasonable likelihood have affected the judgment of the jury . . . ." *Napue, supra,* at 271.

In the circumstances shown by this record neither DiPaola's authority nor his failure to inform his superiors or his associates is controlling. Moreover, whether the nondisclosure was a result of negligence or design, it is the responsibility of the prosecutor. The prosecutor's office is an entity and as such it is the spokesman for the Government. A promise made by one attorney must be attributed, for these purposes, to the Government. See Restatement (Second) of Agency § 272. See also American Bar Association, Project on Standards for Criminal Justice, Discovery and Procedure Before Trial § 2.1 (d). To the extent this places a burden on the large prosecution offices, procedures and regulations can be established to carry that burden and to insure communication of all relevant information on each case to every lawyer who deals with it.

Here the Government's case depended almost entirely on Taliento's testimony; without it there could have been no indictment and no evidence to carry the case to the jury. Taliento's credibility as a witness was therefore

an important issue in the case, and evidence of any understanding or agreement as to a future prosecution would be relevant to his credibility and the jury was entitled to know of it.

For these reasons, the due process requirements enunciated in *Napue* and the other cases cited earlier require a new trial, and the judgment of conviction is therefore reversed and the case is remanded for further proceedings consistent with this opinion.

Reversed and remanded.

MR. JUSTICE POWELL and MR. JUSTICE REHNQUIST took no part in the consideration or decision of this case.